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TRANSCRIPT OF RECORD.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 259.

THE REPUBLIC OF COLOMBIA, APPELLANT,

vs.

THE CAUCA COMPANY AND THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

FILED FEBRUARY 28, 1902.

(18,428.)

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(1) UNITED STATES OF AMERICA, *ss:*

At a United States Circuit Court of Appeals for the Fourth Circuit, begun and held at the court house in the city of Richmond on the first Tuesday in February, being the fourth day of the same month, in the year of our Lord one thousand nine hundred and two.

PRESENT:

Hon. NATHAN GOFF, Circuit Judge,
Hon. CHARLES H. SIMONTON, Circuit Judge,
Hon. WILLIAM H. BRAWLEY, District Judge.

Among other were the following proceedings, to wit:

The Republic of Colombia, Appellant, *vs.* The Cauca Company and Colombian Construction & Improvement Company, Appellees.	No. 407. Appeal from the Circuit Court of the United States for the District of West Virginia.

Be it remembered that heretofore, to-wit: on the 26th day of March, 1901, transcript of the record of the said Circuit Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows, to wit:

TRANSCRIPT OF RECORD.

IN THE Circuit COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and the "Colombian Construction and Improvement Company."

ORIGINAL BILL OF COMPLAINT WITH EXHIBITS.

Before the Honorable NATHAN GOFF, CALDERON CARLISLE, WILLIAM G. JOHNSON, Solicitors for Complainant, EDWIN MAXWELL, of Counsel.

BILL.

(2) Filed December 15, 1897.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants.

To the Honorable NATHAN GOFF, Circuit Judge:

The Republic of Colombia, a body corporate and politic under the Law of Nations, and a foreign state within the meaning of the Constitution of the United States, brings this its bill against the "Cauca Company," and "The Colombian Construction and Improvement Company," two certain commercial corporations created and existing under the laws of one of the United States of America, to-wit: the State of West Virginia, as apperrs by their certificates of incorporation hereinafter mentioned.

And your orator shows that this complainant is a foreign state at peace with the United States and holding dip-

lomatic relations therewith, and that its accredited diplomatic representative duly recognized and received as such by the United States, is General Julio Rengifo, Charge d' Affairs *ad interim*, as will more fully appear by the certificate of the Department of State of the United States which (3) it is prayed may be taken and read as part of this bill, and which is filed herewith, a printed copy thereof being hereunto annexed and marked Complainant's Exhibit No. 1. And the said General Rengifo is, as the national representative of the complainant in the United States, and as its agent *ad hoc*, fully authorized and empowered by the Republic of Colombia, to sign this bill in its name and to make oath thereto on its behalf.

That the defendants, the "Cauca Company," and "The Colombian Construction and Improvement Company" have no office or place of business within the State of West Virginia, and under the laws of said State and by their articles of incorporation they are not required to have such within the said State, but they are required by the laws of the State of West Virginia to appoint and maintain within the said State a certain attorney upon whom service of all process shall be made, and in compliance with said laws said corporations have duly appointed John B. Floyd of the city of Charleston, in the State of West Virginia, upon whom the process of this court can be served, as will more fully appear by the certified copies of said appointments filed herewith, printed copies thereof being hereunto annexed and marked Complainant's Exhibit Nos. 2 and 3.

And thereupon your orator complaining shows:

1. That on or about the 27th day of August, 1890, the Republic of Colombia was the owner of a certain railroad within the limits of said Republic running eastwardly from Buenaventura towards the city of Manizales about twenty-nine kilometers and seven hundred and fifty meters in length, twenty-seven kilometers and one hundred meters of which was completed road and about two kilometers and six hundred and fifty meters of partly completed road, and that a portion of the completed road, twenty kilometers and two hundred and forty metres in length, was being operated by this complainant.

(4) 2. That on the said 27th day of August, 1890, one James L. Cherry, a citizen of the United States, entered into a certain written contract with your complainant, the Republic of Colombia, through its authorized agents and officers, which it is prayed may be taken and read as a part of this bill, a copy of which is hereunto annexed, marked Com-

plainant's Exhibit No. 4. That by the National Constituton of this complainant, which is the supreme law of the land, absolutely binding all its citizens and all the departments of the government, it is expressly provided that the Congress shall have power to approve or disapprove any such contract. That the said contract was thereafter fully ratified and approved with certain modifications by an act of the Congress of the Republic of Colombia, dated October 16, 1890, in accordance with the provisions of the constitution aforesaid and of the said contract, and English translation of which act of Congress is appended to said contract and included in Complainant's Exhibit No 4. The said contract, as thus modified and approved by the Congress, was accepted by the said James L. Cherry.

3. That by said contract the said Cherry undertook to complete the line of the railroad aforesaid from the city of Buenaventura, on the Pacific coast to the city of Manizales by way of Cali, a distance of about three hundred miles, the whole of said route being withing the territory of the Republic of Colombia. That by said contract the said Cherry undertook to begin the work of construction within four months from the said 27th day of August. 1890, and to complete and open to traffic the railroad aforesaid from Buenaventura on the Pacific coast to the city of Cali, a distance of about one hundred and sixty kilometers, within the peremptory period of four years from said 27th day of August, 1890.

(5) 4. That in consideration of the faithful performance of his contract by the said Cherry, the complainant granted to him the exclusive privilege of constructing and operating the said railroad, and also the exclusive privilege of constructing and operating certain other important and valuable roads, and in addition thereto gave large and liberal grants of lands and mines and other valuable rights and privileges, all of which will more particularly appear by reference to said contract, Complainant's Exhibit No. 4.

5. That within the said period of four months, within which the said Cherry had bound himself to begin work, and on or about the 29th day of November, 1890, the defendant, the "Cauca Company," was incorporated under the laws of the State of West Virginia, as will more fully appear by its certificate of incorporation, which it is prayed may be taken and read as a part of this bill. and a copy of which is hereunto annexed and marked Complainant's Exhibit No. 5.

6. That on the same day, to-wit: the 29th day of No-

vember, 1890, the defendant, "The Colombian Construction and Improvement Company," was incorporated under the laws of the State of West Virginia, as will more fully appear by its certificate of incorporation, which it is prayed may be taken and read as a part of this bill, and a copy of which is hereunto annexed and marked Complainant's Exhibit No. 6.

7. That on the same 29th day of November, 1890, the defendant, the Cauca Company, entered into a certain written contract with the said James L. Cherry, which it is (6) prayed may be taken and read as a part of this bill, and a copy of which is hereunto annexed, marked Complainant's Exhibit No. 7; and on the same 29th day of November, 1890, the defendant, the Colombian Construction and Improvement Company, entered in a certain written contract with the said James L. Cherry which it is prayed may be taken and read as a part of this bill, and a copy of which is hereunto annexed and marked Complainant's Exhibit No. 8.

8. And your orator further shows that the said contract of the defendant, the Cauca Company, with the said Cherry and the said contract by the defendant, the Colombian Construction and Improvement Company, with said Cherry, if not utterly null and void, were, together with the organication of said defendant corporations, part and parcel of a scheme to cheat and defraud the complainant and to escape the just obligations of the contract between the complainant and the said Cherry, and to evade the faithful performance thereof, and at the same time to secure to the said Cherry and his associates the beneficial provisions of said contract between the complainant and the said Cherry.

9. Your orator further shows that even if the said Cherry, or the defendant, the "Cauca Company," or the defendant, "The Colombian Construction and Improvement Company," did, in good faith, within four months from the said 27th day of August, 1890, commence the actual construction of the said railroad, nevertheless neither the said Cherry, nor either of said defendants, nor any other person or corporation, within the period of four years from the said 27th day of August, 1890, did complete the first section of said road from Buenaventura to Cali as provided in said contract, nor did the said defendants nor the said (7) Cherry nor any other person or corporation construct any part of the works agreed to be constructed in conformity with the stipulations and provisions of said contract. But, on the contrary, your orator avers the truth to

be that all the work and labor ever done by any person or corporation whomsoever on the said road from the date of the contract with the said Cherry, and up to the 16th of November, 1894, more than four years after the date of Cherry's said contract, was less than ten kilometers, and the work which was done was imperfectly done and not in strict or substantial compliance with the requirements of the said contract, as appears by the affidavit of Francisco J. Cisneros, herewith filed, which it is prayed may be taken and read as a part of this bill, a printed copy thereof being hereto annexed, marked Complainant's Exhibit No. 9. And your orator is informed and believes and therefore charges that no part of said work was done by the defendant, the Cauca Company.

10. That failure to build the road within the time and in the manner prescribed, and various other matters, were, each of them, by the terms of the contract with Cherry, made cause of forfeiture to the Republic of Colombia, the complainant herein, and by said contract it was expressly provided that in case of forfeiture of the concession for any of the causes thereinbefore set forth the work that had been done should become the property of the nation, as well as also such sums as at the date of the declaration of the forfeiture might have been deposited as security by the concessionary.

11. That on the 16th of November, 1894, more than four years after the date of the contract with or concession (8) to the said Cherry, the said contract not having been performed and the forfeiture in the said contract provided having been duly incurred, the Congress of Colombia in a law entitled "Law Sixty, 16th of November, 1894," directed the Government to proceed to decree the forfeiture, and in the same law a pretended extension of the time for the completion of the road to Cali procured in December, 1892, from executive officers without authority and which had never been in anywise authorized, ratified or approved by the Congress, was expressly repudiated, and it is prayed the said law may be taken and read as part hereof, and an English translation thereof is hereunto annexed marked Complainant's Exhibit No. 10. Thereafter, on the 16th of October, 1895, by Resolution No. 9 of that date the said forfeiture was declared in pursuance of said legislative authority.

12. That no proceeding in pursuance of the said forfeiture of the concession enforcing its provision that all work that had been done should become the property of the

nation having been finally completed, and no application to refer the question of the right of forfeiture to arbitration, as provided in article thirty-seven of said contract with said Cherry, having been made, this complainant, yielding to the solicitations of the said Cherry as the agent and attorney of the defendant, the "Cauca Company," and in deference to the friendly intervention in its behalf of the Minister of the United States at Bogota, but not in pursuance of any negotiations with the United States of America, and without entering into any compact, agreement or stipulation with the said United States or their representative, voluntarily decided not to avail itself of its right under the contract to assume, without any compensation, the ownership of the work that (9) had been done, and thereupon the Congress of the complainant passed the act entitled Law 41 of 1896, authorizing the Executive to make a friendly settlement of the controversy growing out of the forfeiture aforesaid, but making it an express condition of any friendly settlement that all claims under the concession of August 27th, 1890, must be obsolutely abandoned, and the road with all its fixed and rolling stock, etc., must be immediately delivered to the Government of this complainant. And it is prayed that said law may be taken and read as part of this bill, the original Spanish text as officially published in Colombia being herewith filed as part of Exhibit No. 22, and a printed copy thereof, together with an English translation, being also filed herewith and marked Complainant's Exhibit No. 11. And under authority of said law this complainant entered into a certain private agreement with the defendant, the Cauca Company alone, a corporation, claiming as assignee of the original concessionary, James L. Cherry, whereby on the one hand the said company agreed to peaceably surrender without contest its possession and control of the road and works and all rights under the concession, and your complainant, the Republic of Colombia, on its part agreed that for all work and labor actually done by the defendant, the Cauca Company, in the construction of so much of said road as had been constructed by it, to pay what the said work had actually cost, and for that purpose agreed to refer the ascertainment of that cost to arbitration. That the said agreement is hereby made part hereof and prayed to be taken and read as a part of this bill, and a duly certified copy thereof in the Spanish text is filed herewith. A printed copy thereof, with a printed English translation, are hereunto annexed marked Complainant's Exhibit No. 12.

13. And this complainant further shows that although, as already stated, the convention for the settlement by ar-
(10) bitration of the difference between the complainant and the defendant, the "Cauca Company," claiming to be the assignee of its concessionary, was a private agreement, and although one of the arbitrators was to be named by the Secretary of the Treasury of this complainant, and another by the attorney in fact of the Cauca Company, it was deemed wise and prudent, in view of the fact that said company was an American corporation, as an evidence of fairness and good faith, to provide that the third commissioner should be agreed upon by the Secretary of State of the United States of America and the Minister of Colombia at Washington.

14. That in and by such agreement it was provided in Article 6, that should any of the members of the commission decline to act or resign from the commission or for any reason cease to act, the proceedings of the commissions should not thereby be invalidated, but the commission should be *restored* by a new appointment which was to be made, by the party who appointed the member who failed to act, within thirty days, counting from the date on which said failure to act should occur. If such party should not comply with such obligation, the Secretary of State of the United States of America and the Minister of Colombia at Washington should proceed by agreement to appoint a person to fill the vacancy.

15. That the members of the said commission were duly appointed, as appears by the certificates of their appointments, which it is prayed may be taken and read as part hereof, and copies of which are hereunto annexed, marked Complainant's Exhibits 13, 14, and 15, and said commission met, as provided in said agreement, in the city of New
(11) York, and held its first session on the third day of April, 1897, and thereafter held thirty-three other sessions, and at the thirty-fifth session, held on the 22nd day of October, 1897, the commission was notified by Manuel H. Pena, the commissioner named by the Minister of the Treasury of complainant, that he had resigned to the said Minister of the Treasury who had appointed him, the office of commissioner, and he transmitted to the other commissioners, through it ssecretary, a copy of his letter of resignation addressed to the said minister. That the said resignation was the independent act of the said commissioner—not done by the order of, or with the knowledge of the complainant, the Republic of Colombia, which only had knowledge of it after the resignation, which was to take

effect from its date, was actually transmitted to the Minister of the Treasury of this complainant.

15. That thereafter neither this complainant, nor any member of its government, nor its representative in the United States, nor its agent specially appointed before the commission, was requested by the defendant, the Cauca Company, or either member of the commission or any other person whomsoever to take any steps to restore the commission by filling the vacancy created by the resignation of the said Pena, as provided in the terms of the convention of January 4, 1897, nor has it ever been requested so to do.

17. And your orator further shows that notwitstanding the voluntary retirement and resignation from said commission, of said Pena, the member appointed by this complainant as aforesaid, the remaining members of said commission, without any notice to this complainant, or anyone (12) representing it, and without its knowledge, and without request or opportunity for restoring the commission by the appointment of a third member as the representative of this complainant, but immediately, and on the same day that said Peno resigned, assembled together and assumed to continue the functions of said commission in the absence of the said Pena, or of anyone representing this complainant, but acting in that behalf wholly under the advice of Marcus Stine, Esquire, an incorporator and stockholder of the defendant corporation, "The Colombian Construction and Improvement Company," and the counsel for the defendant, the Cauca Company, in the proceedings before said commission, undertook to consider and decide matters not theretofore acted upon by the full commission, but which had been postponed from a previous meeting for further consideration, and finally formulated a pretended decision or award, which it is prayed may be taken and read as part hereof, one of the originals of said pretended award, together with the letter transmitting the same to the diplomatic representative of complainant at Washington, is filed herewith, and a printed copy thereof is hereunto annexed marked Complainant's Exhibit No. 16.

18. Your orator further shows that it is advised and believes and therefore charges that the said commission, after the retirement and resignation of the said Pena, was wholly incompetent in law to proceed further with the consideration of the matter submitted to it, or to make any decision or award in the premises, or to do any other matter or thing until the said commission had been restored in accordance with Article six of the agreement under which

the said commission existed, that is to say, by the appointment by this complainant of another person in the place and stead of said Pena, or by the joint agreement of the (13) said Rengifo and the Secretary of State of the United States of America in the event of the failure of this complainant to appoint such successor, And your orator further says that it is advised and believes and therefore charges that no successor having been appointed by this complainant or anyone with its authority, and no request having been made for such appointment, and no opportunity having been given this complainant to make such appointment and the complainant having no knowledge or notice of the attempt of the remaining members of said commission further to proceed in the matter, and not having assented thereto or acquiesced therein, the said pretended decision or award is a nullity, and the action of the said remaining members of the said commission in formulating and making the same was and is *ultra vires* and void.

19. Your orator further shows that two of the said commission, that is to say, Christian F. Schramme, the representative of the defendant, the Cauca Company, and Lewis M. Haupt, the member appointed by the Secretary of State of the United States of America and the diplomatic representative in the United States of this complainant, in disregard of their duty of fairness and impartiality, misconducted themselves in the last two sessions so held by them as aforesaid by taking in and admitting as a party to their deliberations the said Marcus Stine, and under and by his direction causing to be destroyed the minutes of their proceedings, and in having formulated and delivered to the secretary of said commission as the true minutes of the said proceedings certain untrue, fabricated and pretended minutes of such proceedings prepared by or under the direction of the said Stine, the counsel of the defendant, the Cauca Company, for the purpose of incorrectly and untruly representing the proceedings of said two members of said commission.

(14) 20. Your orator further shows that the said Haupt, in violation of his duty, impartially and fairly to consider and decide, as required by the agreement creating the said commission, the matters in controversy submitted to it by the parties thereto, before the various matters in behalf of the parties in interest had been completely presented, and without considering or examining the views presented for his examination and consideration by this complainant, but wholly disregarding the same did, on the 12th day of October, 1897, promulgate a certain projected scheme of de-

cision or award, and submitted the same to the said commission as a basis for final action. And the said Haupt in further diiregard of his duty to this complainant, as a member of said commisston, subsequently attempted to suppress from the minutes of such proceedings a part of said projected decision or award after the same had been discussed and considered by the whole commission, and directed the secretary of said commission to expunge from the records of its proceedings the said part of said projected decision or award for the purpose and with the object of misrepresenting the true course of procedure of the said commission and particularly of the conduct of said Haupt and the said Christian F. Schramme.

21. Your orator is further advised and believes, and therefore charges that such course on the part of the said Haupt amounted to misconduct as an arbitrator, was in violation of his duty in the premises and was so far partial, unjust and improper as to disqualify him as an arbitrator and to render any award or decision by him, not acquiesced in by this complainant or its representative in the commission, invalid.

(15) 22. Your orator further shows that the said Haupt and the said Schramme further misconducted themselves as arbitrators under the agreement between this complainant and the defendant, the Cauca Company, in that they received and considered, against the objection of this complainant duly made by its representatives and agents before said commission, wholly incompetent evidence in this that they received the oral testimony of the said Schramme, one of the arbitrators, as to certain pretended conversations, agreements and understandings between him and certain executive officers of this complainant prior to the making of the agreement under which the said arbitrators were acting, and other wholly incompent evidence as to the true intent and meaning of the said articles of agreement under which said arbitration was sitting; and the said Haupt and Schramme, acting upon such illegal and incompetent evidence, undertook to decide, and did decide, against the true intent and meaning of the said written agreement and in support of the alleged conversations, agreements and understandings between the said Schramme and certain executive officers of this complainant, and of the other incompetent evidence as to the true intent and meaning of the provisions of said articles of agreement in regard to the matters submitted to said commission for their decision. And your orator is advised and believes, and therefore charges that in thus acting, the said arbitrators disregarded

their duty in the premises and the rights of this complainant, and that by such misconduct on their part the said two arbitrators became and were disqualified to act as arbitrators, and any decision or award agreed upon by them in pursuance of such misconduct and not acquiesced in or consented to by this complainant or its representatives, was invalid, and that the said award or decision by the said Haupt and Schramme is for that reason also invalid and void.

(16) 23. Your orator further shows that by the true intent and meaning of the said agreement between this complainant and the defendant, the Cauca Company, executed on the 4th of January, 1897, the said commission was given no other right, power or authority than to ascertain what the defendant, the Cauca Company, should prove it had actually expended in the construction of so much of the said railroad, provided to be constructed in the said contract with the said Cherry, as had in fact been constructed by it, and for rolling stock, tools and the like, imported for use on said railroad.

24. Your orator further shows that the said defendant, the Cauca Company, did not prove that it had expended any sum whatever for said purposes, and did not, and does not now, pretend that it did expend any sum whatsoever therefor; but, on the contrary, it admitted that the claims urged before the said commission of arbitrators were based wholly and exclusively upon alleged expenditures of money and liabilities incurred by the defendant, the Colombian Construction and Improvement Company. And your orator further shows that the defendant, the Cauca Company, in order to meet this situation before the said commission, presented to said commission a certain instrument purporting to be a release from the defendant, the Colombian Construction and Improvement Company, to this complainant, which it is prayed may be taken and read as a part of this bill, and a copy of which is herewith filed marked Complainant's Exhibit No. 17. Your oratior is further advised and believes, and, therefore, charges that the said instrument cannot have the effect of supplying proof by the said defendant, the Cauca Company, in the premises; that the said instrument is not an assignment of the rights, if any, of the said Colombian Construc-
(17) tion and Improvement Company to the said defendant, the Cauca Company, nor, if it were, could it give to the said defendant the Cauca Company any rights against this complainant nor justify any award or decision it by the said commission of arbitrators. This complainant does

not know whether the said defendant, the Columbian Construction and Improvement Company, pretends to any claim against this complainant by reason of the premises, nor whether or not it claims any right or interest in the said pretended award of the said Haupt and Schramme hereinbefore referred to, but it is advised and believes and therefore charges that the said defendant, the Columbian Construction and Improvement Company, should be required to discover in this cause what, if any, interests or rights it pretends to have in the premises.

25. Your orator further shows that it is advised and believes and therefore charges that as the said defendant, the Cauca Company, did not prove that it had expended any sums of money whatsoever or that it had any pecuniary interest in the subject matter of the agreement of January 4, 1897, the said commission could not validly make any award or decision in its favor, and for that reason also the said pretended award and decision is invalid and void.

26. Your orator further shows that it had no notice or knowledge and no means of knowing at the time of entering into the said agreement of the 4th of January, 1897, with the said defendant, the Cauca Company, of the true state of the facts and that the said Cauca Company had expended no money and was not pecuniarily interested in the claims for cost of the partial construction of a portion (18) of said railroad, but that on the contrary it was induced to enter into said agreement through the false and fraudulent representations of the said Schramme and his associates that the said work of construction had been done and paid for by the said defendant, the Cauca Company.

27. Your orator further shows that during the existence of the said commission and before the resignation of the said Pena and while the said commission was hearing the contentions of the complainant and the defendant, the Cauca Company, the said defendant, the Cauca Company and this complainant, through their respective agents and representatives, entered into a stipulation that the sum of two hundred and thirty-three thousand, nine hundred and nine dollars and fourteen cents had been expended in constructing the said portion of the said railroad so defectively constructed as hereinbefore set forth and in rolling stock, tools, &c., and agreed that the said commission should find that the said defendant, the Cauca Company, had expended that sum on said works, which stipulation it is prayed may be taken as a part hereof and a copy of which is hereto attached, marked Complainant's Exhibit No. 18. That by

the agreement creating the said arbitration it was admitted that the complainant had already paid the defendant, the Cauca Company, on account of the matter submitted to arbitration the sum of two hundred thousand dollars, that no other expenditures within the terms of the submission to arbitration were shown, so that the said arbitrators had in no event, the power to award to the defendant, the Cauca Company, any sum in excess of thirty-three thousand nine hundred and nine dollars and fourteen cents, and the said pretended award, being for an amount in excess of said sum, is for that reason also invalid.

(19) 28. Your orator further shows that by the pretended award or decision of said Haupt and Schramme, hereinbefore referred to, the complainant is held to be liable to pay to the defendant, the Cauco Company, the sum of four hundred and fifty-two thousand and forty-eight dollars and ninety-three cents in addition to the said two hundred thousand dollars already paid, and there is awarded to the said Marcus Stine, not a party to the said agreement, and to whom the commission had no authority to award any sum whatsoever, the sum of ten thousand dollars, all gold coin of the United States of America, and it is for that reason also invalid.

29. Your orator further shows that the said Haupt and Schramme reached the said decision or award by undertaking to allow to the defendant, the Cauca Company, claims not founded upon any matter submitted to them as arbitrators by the said agreement of January 4th, 1897, but wholly outside the same and wholly without their jurisdiction, except the said sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents And your orator is advised and believes and therefore charges that even if the said award or decision were not invalid for all or any of the reasons hereinbefore set forth, that the said arbitrators having proceeded beyond the articles of submission and determined upon matters not left to their judgment by the said agreement, their said allowances of the same are utterly without jurisdiction and null and void, and their said pretended award is for this reason also invalid.

30. Your orator further shows that the said commission provided for the stenographic report and printing of all of the proceedings had before them, and that the same (20) have been fully and completely reported, transcribed and printed, and a copy of said Report, duly certified by the Secretary of the said Commission, and the accuracy of

which is verified by his affidavits, is herewith filed. The said Report is in three volumes marked Complainant's Exhibits Nos. 19, 20 and 21, which it is prayed may be taken and read as a part of this bill of complaint. By an accident one of the papers directed to be included in said printed report, to-wit: the act of the Congress of Colombia known as Law No. 41 of 1896, hereinbefore mentioned as Complainant's Exhibit 11, was omitted, and by the direction of the said arbitrators certain other papers before the Commission, all of which are referred to and described in the printed report of proceedings, were omitted from said printed report, as appears by the affidavit of said secretary, Harold R. Miller, herewith filed and prayed to be taken and read as a part hereof, and which is marked Complainant's Exhibit No. 22.

31. Your orator further shows that the several items of which the pretended award or decision of four hundred and sixty-two thousand and forty-eight dollars and ninety-three cents is composed specifically appear in the said proceedings, together with the grounds of the claims of the defendant, the Cauca Company, and the grounds of admitting and allowing the same by the said arbitrators Haupt and Schramme, and your orator is advised and believes, and therefore charges, that all of said items except the sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents, hereinbefore mentioned, are wholly without the subject matter submitted to the said arbitrators under the said agreement of the fourth of January, 1897, and are in no respect connected therewith, and that no warrant or authority existed in the said arbitrators (21) to allow the same or any part thereof. And your orator is further advised and believes and therefore charges that the said pretended decision or award, being wholly without the power, authority and jurisdiction of the said arbitrators, that this complainant is not bound thereby, but that the said pretended award or decision having been made under colorable and pretended authority of this complainant, this complainant is entitled to have the same decreed by this court to be null and void.

32. Your orator further shows that the said Haupt and Schramme, in pursuance of a pretended but erroneous and unlawful construction of the agreement of January 4, 1897, undertook to allow and award as one of the items composing the said sum of four hundred and sixty-two thousand and forty-eight dollars and ninety-three cents last above mentioned, the sum of one hundred and eight thousand one hundred and eighty-one dollars and forty-two cents

claimed as salaries to the said Schramme and the said Cherry as executive officers of the defendant, The Columbian Construction and Improvement Company, the said salaries being for pretended services to said company from December 1, 1890, to January 26, 1897, covering a period of more than two years after the said forfeiture had been declared by the Congress of this complainant, and nearly a month after the signing of the said agreement under which said arbitration was acting. And in further pursuance of the same unlawful and erroneous construction of said agreement they undertook to allow and award, as one of the items composing said aggregate sum, the sum of one hundred and forty-eight thousand, one hundred and sixty-four dollars and thirty-three cents, the amount claimed to be due from the defendant the Columbian Construction and Improvement Company to the said Cherry for the assignment to it of his interest in the contract between said Cherry and the defendant, the Cauca Company.

(22) The pretext for said allowance by said Haupt and Schramme was that said purchase from said Cherry by the defendant the Columbian Construction and Improvement Company of his pretended rights under the concession of lands, mines and other rights and privileges granted by complainant in the contract of August 27, 1890, was a legitimate part of the cost of construction of the six miles, part of said road, in said contract mentioned.

But your orator says that, as hereinbefore shown, the said concession was granted in consideration of the building of the entire three hundred miles of railroad mentioned in said contract, as fully appears therein, and the said concession had been forfeited, as hereinbefore shown, because only six miles of said road had been built, and the question of the validity of said forfeiture or the value of said concession was not submitted to the judgment of the arbitrators by the agreement of January 4th, 1897, but by the express terms thereof the defendant, the Cauca Company, surrendered and abandoned all rights to the concession or any part thereof, and by the express terms of said agreement agreed to accept in lieu of any rights under the concession such amount as it should prove to have expended in the construction of said six miles of said road, and the cost of tools, rolling stock and the like used thereon and existing at the time of the surrender; and the ascertainment of the amount of said expenditures was the only matter submitted to the said arbitrators by said agreement of January 4, 1897.

And the said Haupt and Schramme also, in pursuance

of said unlawful and erroneous construction of said agreement, allowed as part of the said aggregate award the sum of twenty-nine thousand, two hundred dollars claimed by the said Schramme and Cherry as extraordinary compensation for special services rendered by them subsequent to November 16, 1894, in effecting a compromise with this complainant and securing from this complainant the agree-
(23) ment under which the said arbitrators were acting.

And your orator also shows that among the items composing the said aggregate sum of said pretended award is the sum of thirty-two thousand and three hundred and thirty-three dollars and forty cents claimed for interest paid upon bonds issued and sold by the said "The Colombian Construction and Improvement Company." And your orator says that no one of the said items, nor any of the other items composing the said aggregate sum of said pretended award of four hundred and sixty-two thousand and forty-eight dollars and ninety-three cents, except the hereinbefore mentioned sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents, was paid out or expended for or in connection with any matter or thing embraced within the subject matter submitted to the said arbitrators by the agreement of January 4th, 1897, but that all of said items are wholly and entirely outside of said submission, and entirely beyond the power, authority and jurisdiction conferred upon the said arbitrators, and therefore null and void in law. And your orator further charges that the said Haupt and Schramme confederated and combined together, and made an exaggerated, unconscionable, and inequitable award against your complainant, and that the said allowance of said items is not only null and void in law, but is grossly exaggerated and wholly against equity and good conscience.

33. Your orator further shows that it is advised and believes and therefore charges that the said items composing the totality of said pretended award being separable, and the complainant having through its agents stipulated and agreed to a finding against it of the said sum of thirty-three thousand, nine hundred and nine dollars and fourteen
(24) cents in addition to the sum of two hundred thousand already paid it is now ready and willing, and here tenders itself ready to pay to the defendant, the Cauca Company, the said sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents, notwithstanding the nullity of the said pretended award, the irregularities in the said proceedings, and the improper and unlawful conduct of the defendants and of the arbitrators, Haupt and

Schramme, hereinbefore referred to. But your orator is advised and believes, and therefore charges, that any claim which the defendant, the Colombian Construction and Improvement Company, may pretend to have in the premises against this complainant must be satisfied out of said sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents.

34. Your orator further shows that it is informed and believes and therefore charges that the defendant, the Cauca Company, through its counsel, Mr. Marcus Stine, and its representative in the arbitration, Christian F. Schramme, has caused copies of the said pretended award and decision made by the said Schramme and Haupt to be sent to the Secretary of State of the United States of America and to the diplomatic representative of this complainant at Washington, and the said defendant, the Cauca Company, represents and pretends that the said award is valid, and also represents and pretends that this complainant is liable to the said defendant, the Cauca Company, in the amount of the said award under the pretense that said award is made by the authority of this complainant under the said agreement of January 4, 1897. That by reason of the said agreement and the apparent and colorable right of said pretended award the said defendant, the Cauca Company, is enabled to harass and annoy this complainant (25) and bring it into discredit unless the pretended award aforesaid shall be decreed to be invalid. And this complainant not desiring to avail itself of its sovereign authority to repudiate said award, nor to subject the same to the analysis and adjudication of its own courts, but on the contrary, desiring, in the same spirit of fairness in which it is established the said arbitration, to extend to the defendant a fair and impartial tribunal for the ascertainment and declaration of its rights, has authorized these proceedings in the judicial tribunals of the United States of America, of which the defendants are citizens.

The complainant therefore prays:

I. That the United States writ of subpœna may issue to the defendants, the Cauca Company and the Colombian Construction and Improvement Company, defendants herein, commanding them and each of them to appear and answer, but without oath, the exigencies of this bill, the oath to said answers being hereby expressly waived.

II. That a preliminary restraining order issue herein

forthwith, to be served with the process of this court on each and both the said defendants, restraining them and each of them, their and each of their agents, attorneys and servants pending the final determination of this cause from in any manner asserting the validity of the said alleged award, or setting up or pretending to any manner of claim or demand against this complainant by reason of the same or anything therein contained, or from in any manner endeavering to harass,annoy or discredit the complainant by the assertion of any matter or right whatsoever founded upon the said alleged award.

(26) III. That the defendant, the Colombian Construction and Improvement Company, be required to discover what, if any, claim against this complainant it pretends to have by reason of any the matters and things hereinbefore referred to or what, if any, claims, rights or interests it pretends to have by reason of the said pretended award of the said Haupt and Schramme, or anything therein contained.

IV. That the said defendants and each of them, their and each of their attorneys, agents and servants may be perpetually enjoined from in any manner asserting the validity of the said alleged award or setting up or pretending to any manner of claim or demand against this complainant by reason of the same or anything therein contained, or from in any manner endeavoring to harass, annoy or discredit this complainant by the assertion of any matter or right whatsoever founded upon the said alleged award.

V. That the said pretended award and decision by said Christian F. Schramme and Lewis M. Haupt, claiming to act as arbitrators under the agreement of January, 4th, 1897, between this complainant and the defendant, the Cauca Company, which said pretended award was promulgated by the said Schramme and Haupt on the 22nd day of October, 1897, may by this court be decreed to be utterly null and void and of no effect.

VI. That the said defendant, the Cauca Company, be ordered and decreed to bring into this court and deliver up to be cancelled the pretended award aforesaid.

(27) VII. That your complainant may have all such other, further and general relief as the nature of its case

may require and to this honorable court may seem meet and proper.

THE REPUBLIC OF COLOMBIA,
By its duly authorized agent,

(Signed.) JULIO RENGIFO,
Charge d' Affaires ad interim of the Republic of Colombia, in the United States of America.

(Signed.) CALDERON CARLISLE,
WILLIAM G. JOHNSON,
Solicitors for the Complainant.

EDWIN MAXWELL,
of Counsel.

CITY OF WASHINGTON, } ss:
District of Columbia, }

I do solemnly swear that I have read the annexed and aforegoing bill of the Republic of Colombia, complainant, against the Cauca Company and the Colombian Construction and Improvement Company, defendants, and know the contents thereof, and the facts therein stated as true, are (28) true, and those stated on information and belief I verily believe to be true.

(Signed.) JULIO RENGIFO.

Subscribed and sworn to before me this tenth day of December, 1897.

Notarial Seal. (Signed.) OSCAR LUCKETT,
Notary Public.

(29) **COMPLAINANT'S EXHIBITS FILED WITH THE FOREGOING BILL.**

Complainant's Exhibit No. I.

(30) No. 1,037.

UNITED STATES OF AMERICA,

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that Senor Don Julio Rengifo is the present duly accredited diplomatic representative of the Republic of Colombia, as Charge d' Affaires *ad interim* near the Government of the United States.

In testimony whereof, I, John Sherman, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Seal of the Department of State.

Done at the city of Washington, this 2nd day of December A. D. 1897, and of the Independence of the United States of America the one hundred and twenty-second.

(Signed.)

JOHN SHERMAN.

Complainant's Exhibit No. 2.

POWER OF ATTORNEY FROM CAUCA COMPANY TO JOHN B. FLOYD.

Know all men by these presents, that the Cauca Company, a corporation incorporated and organized under the laws of the State of West Virginia, in conformity with the laws thereof, hereby constitutes and appoints John B. Floyd, of Charleston, Kanawha county, in the State of West Virginia, to be the true and lawful attorney to accept service on behalf of said corporation, and upon whom ser-
(31) vice may be had of any process or notice, and to make return for and on behalf of said corporation of its property in said State for taxation. And the said corporation stipulates and agrees that any lawful process against said corporation which is served on its said attorney, shall be of the same legal force and validity as if served on the said corporation.

In witness whereof, the said Cauca Company (pursuant to a resolution of its Board of Directors, duly passed on the 10th day of December, 1890, a certified copy whereof is hereto annexed) hath caused these presents to be signed by its president, and countersigned by its secretary, and the corporate seal of said corporation to be hereto affixed, this 27th day of January, 1891.

(Signed) CAUCA COMPANY,
By ROBERT W. PATERSON, President.

GEORGE RUSSELL, Secretary.

[Seal.]

(Copy)

At a meeting of the Board of Directors of the Cauca Company, held on the 10th day of December, 1890, a quo-

rum being present, the following resolution was adopted:

"Resolved, That this company hereby appoints John B. Floyd, of Charleston, Kanawha county, State of West Virginia, to be its true and lawful attorney in the State of West Virginia, to accept service on behalf of the corporation, and upon whom service may be had of any process or notice, and to make return for and on behalf of the corporation of its property in said State for taxation; and this corporation hereby stipulates and agrees that any lawful process against said corporation, which is served on its said attorney, shall be of the same legal force and validity as if served on the corporation. And the president and secretary are hereby authorized to execute in the name of the corporation and under its corporate seal, a certificate of authority or power of attorney to the said John B. Floyd, in conformity with this resolution and the laws of the State of West Virginia."

(32) I hereby certify that the foregoing is a true copy of the resolution of the directors of the Cauca Company, authorizing the appointment of an attorney in the State of West Virginia as recorded by me.

Seal. Witness my hand and the seal of said corporation, this 27th day of January, 1891.

(Signed.) GEORGE RUSSELL, Secretary.

STATE OF NEW YORK,
City and County of New York.

I, Leo G. Rosenblatt, a notary public in and for the county and State aforesaid, hereby certify that Robert W. Patterson, president of Cauca Company whose name is signed to the foregoing power of attorney, bearing date on the 27th day of January, 1891, this day personally appeared before me in my said county, and acknowledged the same for himself and for and on behalf of the Cauca Company, and the said Robert W. Patterson, being first duly sworn, did depose and say: That he is the president of said Cauca Company; that he resides in the city of Brooklyn; that the seal affixed to the said power of attorney is the corporate seal of said company and was so affixed by order of the board of trustees of said company.

Seal. Given under my hand and official seal this 27th day of January, 1891.

(Signed.) LEO G. ROSENBLATT,
Notary Public,
New York County.

STATE OF NEW YORK, City and county of New York. } ss:

I, Leo G. Rosenblatt, a notary public in and for the county and State aforesaid, hereby certify that George Russell, secretary of the Cauca Company, whose name and seal are affixed to the foregoing power of attorney and cer-
(33) tificate bearing date January 27th, 1891, this day personally appeared before me in my said county and acknowledged the same for himself and for and on behalf of said company, and being first duly sworn did depose and say: That he resides in the city of Brooklyn, is secretary of Cauca Company, knows its corporate seal and that the seal affixed to said power and certificate is such corporate seal and was so affixed by order of the board of trustees of said company.

Seal. Given under my hand and official seal, this 27th day of January, 1891.

(Signed.) LEO G. ROSENBLATT,
Notary Public,
New York County.

Kanawha County Court Clerk's Office, Feb'y 9th, 1891.

This power of attorney was this day presented to me in my office, and thereupon, together with the certificate and resolution thereto annexed, is admitted to record.

Teste:

(Signed.) J. W. GOSHORN,
Clerk Kanawha County Court.

STATE OF WEST VIRGINIA,

OFFICE OF SECRETARY OF STATE.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that the foregoing is a true and correct copy of the power of attorney of the Cauca Company, dated the 27th day of January, 1891, and of record in my said office.

Seal. Given under my hand and the great seal of the said State at the city of Charleston, this thirtieth day of October, 1897.

(Signed.) WM. M. O. DAWSON,
Secretary of State.

Complainant's Exhibit No. 3.

(34) POWER OF ATTORNEY FROM COLUMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY TO JOHN B. FLOYD.

Know all men by these presents, That the Columbian Construction and improvement Company, a corporation incorporated and organized under the laws of the State of West Virginia, in conformity with the laws thereof, hereby constitutes and appoints John B. Floyd, of Charleston, Kanawha county, in the State of West Virginia, to be the true and lawful attorney to accept service on behalf of said corporation, and upon whom service may be had of any process or notice, and to make return for and on behalf of said corporation of its property in said State for taxation. And the said corporation stipulates and agrees that any lawful process against said corporation, which is served on its said attorney, shall be of the same legal force and validity as if served on the said corporation.

In witness whereof, the said Colombian Construction and Improvement Company (pursuant to a resolution of its Board of Directors, duly passed on the 15th day of December, 1890, a certified copy whereof is hereto annexed) hath caused these presents to be signed by its President, and countersigned by its Secretary, and the corporate seal of said corporation to be hereto affixed, this 27th day of January, 1891.

COLUMBIAN CONSTRUCTION AND IMPROVEMENT CO.

(Signed.) By H. A. RICHARDSON, President.

C. S. DUAUML, Secretary and Treasurer.

[SEAL]

(Copy.)

At a meeting of the Board of Directors of the Colombian Construction and Improvement Company, held on the
(35) 15th day of December, 1890, a quorum being present, the following resolution was adopted:

Resolved, That this company hereby appoints John B. Floyd, of Charleston, Kanawha county, State of West Virginia, to be its true and lawful attorney in the State of West Virginia, to accept service on behalf of the corporation, and upon whom service may be had of any process or notice, and to make return for and on behalf of the corporation of its property in said State for taxation; and this corporation hereby stipulates and agrees that any lawful

process against said corporation which is served on its said attorney, shall be of the same legal force and validity as if served on the corporation. And the President and Secretary are hereby authorized to execute, in the name of the corporation and under its corporate seal, a certificate of authority or power of attorney to the said John B. Floyd, in conformity with this resolution and the laws of the State of West Virginia.

I hereby certify that the foregoing is a true copy of the resolution of the directors of the Colombian Construction and Improvement Company, authorizing the appointment of an attorney in the State of West Virginia as recorded by me.

Witness my hand and seal of said corporation,
[Seal.] this 27th day of January, 1891.

(Signed.) C. S. DUAURML,
Secretary and Treasurer.

STATE OF NEW YORK,
City and County of New York. }

I, Leo G. Rosenblatt, a notary public in and for the county and State aforesaid, hereby certify that Henry A. Richardson, President of the Colombian Construction and Improvement Company, whose name is signed to the foregoing power of attorney, bearing date on the 27th day of January, 1891, this day personally appeared before me, in my said county, and acknowledged the same for himself (36) and for and on behalf of the Colombian Construction and Improvement Company, and said Richardson duly sworn and deposes and says: That he resides in the city of Brooklyn, is president of said company, and that he affixed the corporate seal to the foregoing instrument by order of the board of trustees, and knows the seal so affixed to be the corporate seal.

{ Seal. } Given under my hand und official seal this 27th day of January, 1891.

(Signed.) LEO. G. ROSENBLATT,
Notary Public,
New York County.

STATE OF NEW YORK,
City and County of New York, } *ss*:

I, Leo. G. Rosenblatt, notary public in and for the county and State aforesaid, hereby certify that Christian F. Schramme, secretary and treasurer for the Colombian

Construction and Improvement Company, whose name is signed to the power of attorney and also to the foregoing certificate, each bearing date the 27th day of January, 1891, this day personally appeared before me in my said county and acknowledged each of said instruments for himself and for and on behalf of the Colombian Construction and Improvement Company, and said Schramme, being duly sworn, did depose and say that he resides in the city of New York, is secretary and treasurer of the said company, knows the corporate seal of said company and that the seal affixed to the said power and the said certificate are each the seal of the said company and were respectively and each so affixed by order of the board of directors.

Seal. Given under my hand and official seal this 5th day of February, 1891.

(Signed.) LEO. G. ROSENBLATT,
Notary Public,
New York County.

(37) Kanawha County Clerk's Office, Feb'y 9th, 1891.

This power of Attorney was this day presented to me in my office and thereupon, together with the certificate and resolution thereio annexed, is admitted to record.

Teste:

(Signed.) J. W. GOSHORN,
Clerk Kanawha County Court.

STATE OF WEST VIRGINIA,

OFFICE OF SECRETARY OF STATE.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that the foregoing is a true and correct copy of the power of attorney of the Colombian Construction and Improvement Company, dated on the 27th day of January, 1891, and of record in my said office.

Seel. Given under my hand and the great seal of the said State, at the city of Charleston, this thirtieth day of October, 1897.

(Signed.) WM. M. O DAWSON,
Secretary of State.

Complainant's Exhibit No. 4.

LAW 16, 1890, CHERRY CONTRACT.

REPUBLIC OF COLUMBIA "DIARIO OFFICIAL."

BOGOTA, Monday, October 20, 1890. Number 8,215.

LAW 16 OF 1890.

(October 18th.)

Ratifying the contract made on the 27th day of August, 1890, for the construction of the railway from Buenaventura to Manizales.

"Contract number 20 granting the concession to con-
(38) struct and operate a steam railway between the port of Buenaventura in the Department of Cauca and the city of Manizales in the Department of Antioquia passing *via* Cali, made between the Government of Colombia and Mr. James L. Cherry.

"Upon law 144 of November 26th, 1888, whereby powers are given to the Government relating to the construction of the Cauca Railway and the Government making use of such powers and especially such to which section 2 of article 4 of said law relates:

"We, the undersigned;

"Ruperto Ferreira, Under-Secretary of the Department of Public Works of the Republic of Colombia, temporarily in charge of the Department, being duly authorized by His Excellency the President of the Republic, of the one part, hereinafter in this contract denominated "the Government" and of the other part James L. Cherry, domiciled at San Francisco, California, in the United States of America, hereinafter styled "the Concessionary," have made the contract set forth in the following paragraphs:

"Art. 1. The Government of the Republic of Colombia grants to the Concessionary, who accepts the same, the exclusive privilege to construct and operate a steam railway on the line included between the port of Buenaventura on the Pacific Ocean in the Department of Cauca and the City of Manizales in the Department of Antioquia. It is understood that the line of the road shall, in any event, be made by way of Cali in the Department of Cauca. Also the preferential right, under like circumstances, for a line practicable to that part of the Atrato navigable for vessels of deep draught of those that navigate the Atlantic Ocean or the north of the Gulf of Darien, and a like right, under like circumstances, to construct the railway from Cali to the

Ecuador line with a branch to Popayan in the Department of Cauca.

"Art. 2. The railway aforesaid shall, for the purposes (39) of this contract, be considered as divided into two sections, that is to say: First: That included between the port of Buenaventura and the city of Cali. Second: The line from Cali to Manizales. The Concessionary binds himself to begin and to complete, in the first place, the construction of the first (1st) section and upon completion thereof to begin the construction of the second (2nd) section; in whole or in part whenever the necessities of traffic shall require, the decision in regard to which shall be made by common accord between the Government and the Concessionary.

"Art. 3. For all legal effects the construction of the railway to which the preceding articles relate is declared to be a work of public utility; and therefore the Concessionary shall have all the rights and rights of action that the law concedes to enterprises of that class.

"Art. 4. The construction of the road shall be commenced formally within four months counting from the date of the execution of this contract; and the first (1st) section of the line shall be completed and opened to traffic within the pre-emptory period of four years counting from such date, except in case of fortuitous circumstances or *vis major*. After beginning the work it shall be continued without interruption unless prevented by *vis major* or fortuitous circumstance and save and except the case of delays occasioned by the Government and unavoidable by the Concessionary.

"Art. 5. The final working plans for the line of the second section shall be made within the period of six months counting from the respective dates when it is decided to begin, in whole or in part, the construction of such section. The formal work of construction on the said second section shall be commenced within the period of six (6) months counting from the date last mentioned. The construction on the second section, having been begun, shall be continued without interruption and be completed five years after the initiation thereof, except in the case of *vis major*, or fortuitous circumstance intervene and force the suspen- (40) sion thereof, or in case delays be occasioned by the Government, unavoidable by the Concessionary.

"Art. 6. The plans, profiles and maps of the line shall be made in duplicate; one copy shall be forwarded to the

Government through the Department of Public Works, and the other shall be kept in the main office of the company at Cali. Both on the plans and elsewhere in everything relating to the enterprise the official standard of measurements of the Republic shall be used.

Art. 7. The Government of the Republic guarantees to the Concessionary interest at the rate of five per cent. (5%) per annum upon the first section and four and one-half per cent. (4½%) per annum upon the second section during the period of eighteen (18) years, upon the basis fixed, stipulated and accepted by both parties, of thirty-eight thousand dollars (38,000) in American gold to each kilometre of the railroad constructed. Such inserest shall be payable in American gold, or the equivalent in any other money, and shall be computed at the end of each year upon the average of kilometres of railroad constructed and put in operation. The interest is secured by the number of kilometres of railroad constructed and put in operation during the period of eighteen (18) years from the time of coustruction. It is understood for the purposes of this article that the construction shall be carried forward continuously from one of the termini of the road to the other, so that no interest shall be paid by the Government for isolated portions of the road constructed until such parts be connected and open for operation. Notwithstanding this, the Government will allow, if it be deemed advisable, the simultaneous construction of two or more different lines binding itself to the guarantee as fixed for the continuous line.

"Art. 8. The guarantee of five per cent. (5%) per annum to which the last preceding article relates shall be computed on the part of the railroad construction between Cordova and Buenaventura, and which is to be delivered to the (41) Concessionary in accordance with the provisions of Article 33 of this contract on the basis of eight thousand dollars (8,000) in American gold to the kilometre, and shall include the time calculated from the termination of the work on the first section to the expiration of eighteen (18) years to which the last preceding article refers.

"Art. 9. The Government is not to pay any interest or the expenses incurred for the preliminary plans and final tracing of the line, as such expenses are considered to be part of the construction work in which the amount thereof must be included. The construction track, side tracks and all other accessories required by the railway, shall be likewise included in each kilometre, so that whatever be disbursed on such work shall also bear no more interest and

have no greater guarantee than that which corresponds to the kilometre where the same are found.

"Art. 10. The Government secures the payment of the interest aforesaid by one-half of the gross revenues from the duties on importation collected at the custom houses of the Republic of Colombia on the Pacific, and shall have the right to issue bonds or drafts to the order of the Concessionary redeemable from such half of such duties. The amount of such interest, liquidated annually to the credit of the Concessionary or of his legal representatives, shall be paid during the month of January of each year by order of the Government in drafts against the national bank of the Public Treasury. In case payment of such drafts be delayed, the Government shall, during such delays, pay interest thereon at the rate of ten per cent. (10%) per annum on sums due and not paid. Such indebtedness shall be considered as acknowledged and with the right of preference. Non-payment of interest shall be considered to be one of the cases set forth at the end of Article 5.

"Art. 11. The present concession relates to a railway of a single track with the curves of service, side tracks, stations, and all else necessary for operating, but the Concessionary (42) shall nevertheless, from the beginning of the work, make allowance of sufficient ground and so arrange the work that a double track can be laid whenever necessary and ordered by mutual accord between the contracting parties. The Concessionary reserves the right to substitute steam by electricity or any other motive power in case the advance in the art make such substitution preferable.

"Art. 12. The line shall be one metre in width between rails on its entire length, and the Concessionary shall, therefore, at the proper time, change that part of the railroad already constructed, which he is to receive in conformity with this contract.

"Art 13. The Concessionary binds himself to suitably arrange that the use of such public or private roads as cross the line or which may be taken for use so that passage thereupon shall not be unnecessarily interrupted or made dangerous by reason of the railway.

"Art. 14. The railway with its curves of service, side tracks, bridges and wharves, shall be constructed in a durable manner of good material, so that it shall furnish security to passengers and shall have sufficient locomotives, freight cars and special cars for first and second-class passengers. The Concessionary binds himself that such pas-

sengers, effects and merchandise as are entrusted to him for transportation shall be carried with care, punctuality and speed, and that he will maintain the road and the facilities for traffic in good condition and in no event inferior to such as are now in existence on the part constructed and that during time of war he will not allow the use of the railway to persons and things the transportation of which may be prohibited by the Government, save and except in the case of *vis major*.

"Art. 15. In case the services of the railway, in whole or in part, be interruped for any length of time by any cause which the Concessionary can avoid and shall not apply all the means at his command to re-establish the same, the Government after hearing the Concessionary and after (43) it be clearly proven that all the means at his command have not been applied to repair the damage, shall have the right to order the repairs to be done for account of the Concessionary.

"Art. 16. Such fixed plant, rolling stock, tools, dynamite, bridges, telegraphic material, plates of galvanized iron and mechanical apparatus for loading and unloading vessels as may be imported for the construction, operation and good service of the railroad and its appurtenances, shall be exempt from the duties of importation and exempt from any other national, departmental or municipal taxes, upon first presenting at the custom houses the respective invoices in each case. The railway and all its accessories and appurtenances shall also be exempt from such taxation and any and every forced loan, exemption and contributions of war.

"Art. 17. The term of the concession by this contract granted to the Concessionary shall be seventy (70) years, counting from the date of its approval by His Excellency the President of the Republic. Upon the termination of such term the railway with all its fixed plant, rolling stock, bridges, wharves, stations and other accessories and appurtenances, all in good working condition except the natural deterioration of wear and tear, shall become the property of the Government, and shall be delivered to it under inventory and without payment to the Concessionary

During the period of the concession, the Concessionary shall be under the obligation to maintain the railway in good working condition, and the Government shall have the right, if it deem it best so to do, to appoint, at its expense, commissioners to report in that regard.

"Art. 18. In order to fix the net revenue of the railway to make the computation of the interest guaranteed by the Government, the gross annual proceeds computed in national currency shall be discounted by the sum of three thousand dollars ($3,000) to the kilometre of road in use, which amount shall be taken as the total sum of the ex-
(44) penses of administration, maintenance and exploitation of the line, whatever may be the actual amount of such disbursements. Hence, if the gross proceeds should not amount during the year to the sum of three thousand dollars ($3,000) to the kilometre, or equal that amount only, the Government shall pay to the Concessionary the total sum of the guaranty as fixed in article 7; and if they should be more the Government shall pay the only difference, if any there be, to the time of the termination of the said guarantee at the date stipulated thereof.

"Art. 19. The right of way granted for this concession shall be forty (40) kilometres on each side of the line, and within such right of way no other railway shall be constructed during the term of the concession without the consent of the Concessionary or his legal representatives; but it is understood that this inhibition shall not be so intended as to prevent the crossing of the right of way by other lines that do not parallel it. And such railways shall not have the right to transport passengers, baggage or freight within the right of way granted by the consent of the Concessionary.

"Art. 20. In case the Government order or authorize the construction of railways or canals that cross the line included in this present concession, the Concessionary shall not have the right to oppose such work, but all necessary means shall be made use of in order that therefrom shall not result any obstacles of any kind to the construction and operation of the railway nor any expense soever to the Concessionary. And such enterprise shall be subject to the provisions of the last clause of article 19.

"Art. 21. The Government shall have the right to appoint at its own cost, if it deem best so to do, employees or special commissioners charged with the examination of construction work, the line or the accounts of the railway, and whenever it so does the Concessionary shall facilitate such commissioners to such extent as may be possible in
(45) the execution of their duties. The report in detail of the results of the working of the road, including the receipts and disbursements that effect the revenues of the

railway during the eighteen (18) years of the guaranty of interest, shall be forwarded weekly to the Minister of Public Works for his examination and approval, this being necessary for the liquidation of the guaranty to which article 7 relates; but whenever the revenues of the railway be sufficient to cover such guaranty, the Concessionary shall not be under obligations to present its accounts nor permit the examination thereof.

"Art. 22. The Concessionary shall have the right to have adjudicated to him preferentially, in conformity with legislation in that regard, such mines or mineral deposits as may be discovered in the right of way granted, and such coal mines as are on said right of way in lands of the Government with the right to use and dispose of the products thereof free from payment of national departmental or municipal taxes.

"Art. 23. The Concessionary shall have the right preferentially, under like circumstances, to the adjudication of unappropriated lands within the limits of the right of way granted. In case of adjudications the same shall be made in conformity with the provisions of law in forms relating to the matter, and the Concessionary binds himself to work such lands as he may acquire as directed in such provisions.

"Art. 24. The Concessionary shall have the right of preference, under like circumstances, in case new proposals be presented for the construction of a railroad to connect the alto Magdalena with the alto Cauca, and also for the construction of a line starting from the last of the lines mentioned in article 1 to the navigable waters of the Putumayo river within the territory of Colombia.

"Art. 25. As security for the performance of the obligations contracted, the Concessionary is to deposit in the hands of such person, as for such purpose may be desig-
(46) nated by the Government at New York, the sum of fifty thousand dollars ($50,000) in American gold, or the equivalent thereof in other money, before the twenty-seventh day of October next.

The Government shall return such sum to the Concessionary as soon as the latter shall legally prove that he has constructed a part of the road, the value whereof shall be equivalent to the sum of two hundred thousand dollars ($200,000) in American gold.

"Art. 26. During the time that such sum to which the last preceding article relates shall remain on deposit the

Government shall have the right to freely dispose thereof or leave the same on deposit; in the first case it shall pay therefor to the Concessionary at the expiration of every six (6) months, yearly interest thereupon at the rate of 5 per cent. (5%) in American gold or the equivalent thereof; in the second case the Concessionary shall only receive whatever the bank where the same is deposited may allow on such deposit.

"Art. 27. The Government, without expense to the railway, shall furnish such police or military force as may be necessary for the protection and safety of the persons and property of the employees, workmen, &c., during the continuance of the concession. The employees of the railway, but not the peons, shall be considered national police agents for the service of the railway, but they shall be exempt from military service or any other private subsidiary, onerous or of forced acceptance.

"Art. 28. The Government, without cost to the Concessionary, shall furnish such rights of way and lands necessary for the railway and its accessories of any kind and to such extent as may be required for the road and its appurtenances, but only when it can be done by unappropriated lands. In all cases the Government will, at the expense of the Concessionary, expropriate such lands owned by private owners as may be necessary for the road and its (47) appurtenances. The Concessionary shall have the right to freely take from the national lands such wood, stone, and other materials for construction purposes as may be required for work upon the railway.

"Art. 29. The Concessionary shall have the right to take a copy of all such plans, gradings and estimates as may have heretofore been made in connection with the railroad to which this contract relates and which are owned by the Government.

"Art. 30. The Concessionary shall have the right to construct such ports, wharves and landing places as may be necessary for the service of the railway, and for such purposes shall have the use, without compensation, of such national lands as may be required for construction, or as may be necessary for extension, provided they be of the same class. The Concessionary shall also have the right to establish such telegraph and telephone lines as may be necessary for the service of the railway, subject, however, to such regulations or dispositions as may have been made or may be made by the Government in the premises relating to such matters. Until the time of completion of the rail-

way the Concessionary shall have the right to the use, without compensation, of the national lines for whatever may relate to the railway.

"Art. 31. The Concessionary shall be at liberty to fix the rates for freight, passage and transportation during the first five (5) years of the concession, after which the same shall be fixed by common accord with the Government and may be modified in like manner; but in no event shall the same be less than those now in force, except with the assent of the Concessionary. The prices of the rates shall be fixed only in current national money.

"Art. 32. All regulations made by the Concessionary or his legal representatives for the service of the railway must be subject to the approval of the Government.

"Art. 33. The Government assigns and transfers to the (48) Concessionary or to his legal representatives gratuitously and by way of subsidy during the period of the concession the use of the present railway between the port of Buenaventura and Cordova, know as the Cauca Railway, with all its fixed plant rolling stock, buildings, utensils, tools, cuts, gradings, accessories and appurtenances. Upon making delivery thereof the kilometres of railroad construted received by the Concessionary, shall be measured off for the purposes of Article 8th, and a note of the number thereof shall be made in the proper proceeding. The delivery of the Cauca Railway shall be made to the Concessionary at the latest fifteen days after the date on which formal work upon the construction of the line shall be begun.

"Art. 34. This present concession shall not be assigned to any government or foreign nation, but may be transferred to any individual, company or corporation of a private character upon giving notice thereof to the Government of the Republic.

"Art. 35. The Concessionary shall fix his domicile in any city in Europe or America which he may see fit to elect for such purpose; but in case he shall not select Bogota he shall keep at the said city an agent vested with sufficient authority to deal with the Government in everything relating to this contract.

"Art. 36. Troops and employees of the Government when travelling on duty under express orders of the Government, military stores and mail bags belonging to the said Government shall be transported by the railway at fifty per cent. (50%) less than fixed rates. Material owned by the Government, such as that pertaining to telegraphs,

tools used for purposes of instruction, etc., shall pay one-half (½) only of the charges for transportation fixed by the rates.

"Art. 37. Both the Concessionary and such person or persons to whom this contract may be assigned shall in relation to this contract be subject to the provisions of Article 15 of Law 145 of 1888, under which such contracts as are (49) made in Colombia between the Government and foreigners, whether individuals or companies, shall be subject to the law of Colombia, and the rights and obligations springing from such contracts shall be interpreted exclusively by local judges and tribunals. In case, for any reason, the Government declare the concession to be forfeited, the Concessionary or whoever may represent him shall have the right to submit the matter to the decision of two experts, one to be appointed by the Government and the other by the Concessionary, and such experts shall appoint an umpire for thecase of disagreement. The decision of the arbitrators or of the umpire by them appointed shall be final and unappealeable. All questions or matters of difference arising between the Government and the Concessionary in relation to this contract shall be decided upon the application of either of the parties by the Supreme Court, except in relation to the declaration of forfeiture of the concession. It is, therefore, an express condition of this contract that the Concessionary shall renounce, as in fact he does renounce, the initiation of any claim by diplomatic channel relative to the rights and obligations springing from the said contract except in case of denial of justice.

"Art. 38. In case the Concessionary completes the first (1st) section before the date stipulated in article 4, the Government shall deliver to him as a premium such titles to unappropriated lands, which can be adjudicated in any part of the Republic, on the basis of one thousand (1,000) hectares for each month of anticipation of the completion of the section aforesaid.

"Art. 39. The present concession and the consequent obligations of the Government shall be forfeited in any of the cases following:

1. Whenever the Concessionary shall fail to comply with any of the obligations contracted by him in articles 4, 6, 25, 34, 35 or 37.

2. Whenever construction work be suspended or the (50) exploitation be abandoned for more than six consecutive months.

Express exception is made of the application of this article in such cases of fortuitous circumstances and *vis major* as may arise and are duly proven.

In case of forfeiture of the concession for any of the causes hereinbefore set forth, all work that may have been done shall become the property of the nation, as well also such sums as at the date of the declaration thereof may be deposited as security by the Concessionary.

"Art. 40. This contract shall require for its validity the approval of His Excellency the President of the Republic, as well as the approval of the national Congress, if that honorable body deem it necessary.

In witness whereof we sign in duplicate of like tenor, at Bogota, the 27th day of August, 1890.

RUPERTO FERREIRA.
JAMES L. CHERRY.

"National Government—Bogata, August 27th, 1890.

"Approved—

CARLOS HOLGUIN.

The under-Secretary of Public Works in charge of the Department.

"RUPERTO FERREIRA."

DECREES:

Art. 1. Let the contract for the construction of the Cauca Railway, made at this capital on the 27th day of August, of the present year, by His Excellency the Minister of the Department of Public Works, Doctor Ruperto Ferreira, and Mr. James L. Cherry in his own behalf, be approved with the following amendments:

Article 22 shall be as follows:

"Art. 22. The Concessionary shall have the right to (51) have adjudicated to him by way of preference under like circumstances, in accordance with legislation in that regard, such mines or deposits of mineral as he may discover in the right of way granted on unappropriated lands and such coal mines as are on such right of way and on such lands, with the right to use and dispose of the products therefrom, exempt frem the payment of national, departmental or municipal taxes."

Article 31 as follows:

"Art. 31. The Concessionary shall be at liberty to fix

the rates of freight, passage and transportation during the first five (5) years of the concession, after which term the same shall be fixed by agreement with the government and same may be changed in like manner; but in no event shall the same be less on the entire line of each section than now charged between Buenaventura and Cordova unless by consent of the Concessionary."

The prices of rates shall be fixed only in current national money.

Art. 2. The Executive shall have the power, by agreement with the Concessionary, to modify articles 8 and 12, of this contract, in the sense that the entire line constructed shall have a width between rails to that part now constructed between Buenaventura and Cordova. In order to make use of this authority the Executive must obtain from the Concessionary a reduction in the price fixed for each kilometre in article 7, in accordance with what he may deem equitable for the decrease in cost of construction and the greater facilities such change implies. In case such change be made the guaranty of five per cent. (5%) per annum, to which article 8 relates, shall not be had as to the part now constructed.

Thus done at Bogota, the 16th day of October, 1890.

The President of the Senate, J. F. Insignares—The President of the House of Representatives, J. M. Dominguez—The Clerk of the Senate, Enrique de Narvaez—The (52) Clerk of the House of Representatives, Miguel A. Penarendonda.

THE EXECUTIVE DEPARTMENT,
Bogota, October 18, 1890.

Let the same be published and carried into execution.

(L. S.) CARLOS HOLGUIN.

The Under Secretary of the Department of Public Works in charge of the Department.

RUPERTO FERREIRA.

Complainant's Exhibit No. 5.

CERTIFICATE OF INCORPORATION OF THE CAUCA COMPANY.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, hereby certify that an agreement, duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the

name of the Cauca Company, for the purpose of establishing, conducting, constructing, operating and maintaining in the Republic of Columbia an Institution for the following purposes:

To cause to be constructed and operated a steam railroad in the Republic of Colombia, from the port of Buenaventura, in the Department of Cauca, to the city of Cali, and with the right to extend the same to the city of Manizales, in the Department of Antioquia, and to such other points or places in the Republic of Colombia as this corporation may in the future decide, and as may be allowed to (53) it by the said Republic of Colombia, and to operate and maintain the said extension, and also to operate and maintain any and all railroads which it may require in said Republic of Colombia.

To build, construct and maintain and operate all railroads, bridges, buildings and other public improvements and machinery necessary or proper for the construction, maintenance or operation of the said railroads; to build, own, lease and use all kinds of motive power, cars, barges, boats and other means of transportation of passengers or property by water, rail or other means of carriage throughout the Republic of Colombia, and to furnish motive power, cars, barges, boats and other means of transportation of passengers or property by water, rail or other means of carriage, throughout the Republic of Colombia, and to furnish motive power in connection therewith for manufacturing and commercial purposes, and to construct, maintain, use, lease, sell or rent all kinds of elevators, docks, piers and other convenient structures for carrying on commerce within said Republic of Colombia.

To construct and maintain lines of magnetic or electric telegraph, telephones, lines of piping or tubing for the transportation of oils or other fluids in connection with or appertaining to or coincident with the operation and maintenance of said railroad.

To buy and purchase and use in every form allowable by the laws of the State of West Virginia, all real or personal property necessary for or proper in connection with the use of said railway or railways allowed by the Government of the country in which said railways are situated.

To purchase, lease, sell, mortgage, or rent or operate all mines of all kinds of material, precious stones and jewels within the Republic of Colombia.

To make all contracts which the directors may deem advisable for the construction of the said lines of railway.

To do all acts, accept all concessions or assign the same, (54) which may be granted to the said company by the

Government of said Republic of Colombia, or by the Government of any Department of said Republic of Colombia, or of any municipality, corporation or individual in said Republic of Colombia.

To mortgage, for such sum as the directors may deem advisable or necessary, all its assets and property, real or personal, and all its rights, franchises, concessions, grants, and privileges, and for such purpose to issue obligations of any description, secured by trust deed or mortgage or otherwise.

And to take all steps and to do all acts necessary to carry into full force and effect and operation, all such concessions, grants, rights, and franchises.

Which corporation shall have its principal office or place of business in the city of New York, in the county of New York and State of New York, with a branch office as may be established from time to time elsewhere, and is to expire on the 24th day of November, in the year one thousand and nine hundred and forty (1940): and for the purpose of forming said corporation we have subscribed the sum of one hundred thousand ($100,000) dollars, and have paid in on said subscription the sum of ten thousand ($10,000) dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to five million ($5,000,000) dollars.

The capital so subscribed is divided into shares of one hundred ($100) dollars each, which are held by the undersigned respectively as follows; that is to say:

Name.	Residence.	No. of Shares.
Robert W. Patterson.	Brooklyn, N. Y.	200
Gustav Schipper.	Plainfield, New Jersey	200
Charles Schipper.	Plainfield, New Jersey	200
Sidney C. Schramme.	New York City, N. Y.	200
George Russell.	Brooklyn, N. Y.	200

(55) And the capital to be hereafter sold is to be divided into shares of a like amount.

Given under our hands and seals this 24th day of November, 1890.

ROBERT W. PATTERSON, [Seal]
SIDNEY C. SCHRAMME. [Seal]
GEO. RUSSELL. [Seal]
CHAS. SCHIPPER, [Seal]
GUSTAV SCHIPPER. [Seal]

Wherefore, the corporators named in the said agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the twenty-fourth day of November, nineteen hundred and forty, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty ninth day of November, eighteen hundred and ninety.

WM. A. OHLEY,
Secretary of State.

[G. S.]

STATE OF WEST VIRGINIA,
Office of the Secretary of State.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, hereby certify that the foregoing and annexed writing is a true and correct copy of the certificate of incorporation of the Cauca Company, a corporation created, formed, and organized under the laws of this State as it appears from the Record of Corporations in my said office.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this first day of December, 1890.

W. A. OHLEY,
Secretary of State.

[G. S.]

Complainant's Exhibit No. 6.

(56) CERTIFICATE OF INCORPORATION OF THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, hereby certify that an agreement, duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Colombia Construction and Improvement Company, for the purpose of establishing, conducting and maintaining in the Republic of Colombia, and in other parts of South and Central America, an institution for the following purposes:

To receive deposits of money, stocks, bonds, mortgages, deeds, wills and other securities and other kinds of valuable personal property and evidences thereof, from any state, body politic, municipal or other corporation, association or person, for the safe keeping thereof, and for this

purpose to own real estate, to construct buildings and fire and burglar-proof rooms, vaults, safes, and boxes for the deposit and safe keeping of papers, securities, plate, jewels and other valuable personal property, and for renting the use of the same.

The construction of railroads, bridges, buildings, and all other public or private improvements, and the manufacturing, selling and dealing in machinery, appliances and materials used in the same.

The building, owning, leasing and using motive power, cars, barges, boats and all other means of transportation of passengers or property by water, rail or other means of carriage, and the furnishing of motive power for manufacturing and commercial purposes, together with all the elevators, docks, piers, and other convenient structures for carrying on commerce.

(57) For constructing and maintaining lines of magnetic or electric telegraph, telephones, or lines of piping or tubing for the transportation of oils or other fluids, and carrying on the business properly pertaining to such improvements.

For purchasing, operating, maintaining, leasing or renting mines of all kinds of minerals, jewels, and precious stones of all kinds.

For engaging in the purchase and sale of all articles or substances of value grown, indigenous, or capable of being produced in said territory, including all kinds of woods, barks, fibres, and similar articles.

To obtain, hold, own, use, exploit, and sell all concessions obtained from the government of any of the States of South and Central America, or from any other political body or corporation, necessary or useful in connection with any of the above purposes.

To manufacture any and all of the above metals and other articles, and the various products thereof.

To act as the fiscal or transfer or other agent or attorney in fact of any State, municipality, body politic, association, or person within such territories, and in such capacity to receive and disburse money and transfer and register and countersign certificate of stock, bonds or other evidences of indebtedness, to purchase and sell stocks, bonds and other personal property on commission, and to do a general brokerage business: to buy and sell bills of exchange, emit letters of credit; to take, accept and execute all legal trusts and commissions in regard to the purchase, holding, management, sale, and disposition of any estate or property, real or personal, and the rents, issues, profits and incomes thereof.

To act as agents for any and all persons, firms, compa-

nies, corporations (national, municipal or otherwise), for the purpose of loaning or investing money upon real estate or other securities or for the payment of such loans, and to do (58) any other lawful business which may be granted or confided to it by any such person, association, corporation or other legal authority. To charge such rents, fees or commissions as may be agreed upon, or as are just and reasonable for the services rendered.

To loan the funds belonging to the company or entrusted to it on security of real or personal estate, to discount notes and bills of exchange and receive interest or discount in advance, to receive funds or money on deposit and give certificate therefor.

To manufacture all articles of merchandise or traffic and construct buildings for said purposes and for all purposes connected with mining, shipping and transporting minerals or smelting and reducing the same, and to buy, sell and lease mineral or other mines as far as authorized by the laws of the State of West Virginia, together will [with] all appliances and machinery necessary or proper for any of said purposes.

To buy, breed, pasture and deal in cattle, horses and other live stock, and to buy, own, sell and lease lands for agricultural and other purposes, and all water rights, range rights, mill rights and other rights, franchises and privileges whatsoever, in so far as such rights do not conflict with the laws of the State of West Virginia.

To carry on the business of life, fire, marine, steam boiler, plate glass and other insurance, as well as the business of guaranteeing titles to real and personal property.

To mortgage for such sum of money as the directors may deem necessary or advisable, all the assets, real or personal, and all the rights, concessions, franchises and grants of such property.

To conduct the business of a mercantile agency, to obtain reports as to the financial standing of corporations, firms and individuals, and supplying such information to its customers.

(59) To establish hotels and springs companies, gas works, electric light plants, water works, building and loan associations, and transact all business pertaining to any of said branches.

For establishing agricultural and industrial societies in so far as the same do not conflict with the laws of the State of West Virginia.

Which corporation shall keep its principal office or place of business in the City of New York, in the county of New York and State of New York, and such other branch

offices as may be established from time to time elsewhere, and is to expire on the 25th day of November, in the year one thousand, nine hundred and forty (1940), and for the purpose of forming said corporation we have subscribed the sum of one hundred and twenty thousand ($120,000) dollars to the capital thereof, and have paid in on said subscription the sum of sixty thousand ($60,000) dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to five million ($5,000,000) dollars in all.

The capital so subscribed is divided into shares of one hundred ($100) dollars each, which are held by the undersigned, respectively, as follows, that is to say:

Name.	Residence.	No. of Shares.
Henry A. Richardson	Brooklyn, N. Y.	200
Robert W. Patterson	Brooklyn, N. Y.	100
Christian F. Schramme	New York City	100
Elisha Dyer, Jr.	New York City	200
Marcus Stine	New York City	250
Bruno R. Schroder	New York City	100
William W. Wickes	Brooklyn, N. Y.	100
Stephen Marx	New York City	100
Charles Schipper	Plainfield, N. J.	50

And the capital to be hereafter sold is to be divided into shares of a like amount.

(60) Given under our hands and seals this 25th day of November, 1890.

HENRY A. RICHARDSON, [Seal.]
ROBERT W. PATTERSON, [Seal.]
CHRISTIAN F. SCHRAMME, [Seal.]
ELISHA DYER, JR. [Seal.]
MARCUS STINE, [Seal.]
BRUNO R. SCHRODER, [Seal.]
WILLIAM W. WICKES, [Seal.]
STEPHEN MARX, [Seal.]
CHARLES SCHIPPER, [Seal.]

Wherefore, the corporators named in the said agreement and who signed the same, and their successors and assigns, are hereby declared to be from this date until the twenty-fifth day of November, nineteen hundred and forty,

a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great seal of the said State at the city of Charleston, this twenty-ninth day of November, eighteen hundred and ninety.

[L. S.]

WM. A. OHLEY,
Secretary of State.

Complainant's Exhibit No. 7.

AGREEMENT BETWEEN JAMES L. CHERRY AND THE CAUCA COMPANY.

This agreement, made this 29th day of November, 1890, between James L. Cherry, of San Francisco, California, party of the first part, and the Cauca Company, a corporation duly organized under the laws of the State of West Virginia,

(61) Witnesseth as follows:

That in consideration of mutual promises and agreements hereinafter contained, and of certain other valuable considerations moving from the parties hereto, unto each other, the parties have agreed as follows:

First. That said Cherry hereby assigns, sets over unto the party of the second part, all his right, title, interest and claim unto a certain contract entered into between him and the Government of the Republic of Colombia, known as Contract No. 20, of the 27th day of August, 1890, together with all the rights and privileges of said contract granted to said Cherry

Second. And the party of the second part hereby expressly covenants and agrees to accept said contract above mentioned, and to perform faithfully all the duties and obligations thereunder to be performed or done by said Cherry and his assigns.

Third. And it is further agreed between the parties that all railroads for and on behalf of the party of the second part, together with all road-beds, stations, rolling stock, and all and every appurtenance of every kind whatsoever, to be used or employed in any way by the party of the second part, shall be constructed by the said James L. Cherry, or such corporation to whom he may assign this contract.

Fourth. And the party of the second part further agrees that in consideration of the building, provisioning

and stocking of said railroads to be built for and in behalf of it, it will pay over unto said Cherry upon the completion of each kilometer of the railroad, in accordance with the terms and conditions embodied in said contract of August 27th, 1890, all the stock, bonds, and all other certificates of indebtedness or obligations issued by or in behalf of said party of the second part; and the party of the second part, in consideration of the building, construction and equipment of its road by said Cherry or assigns, hereby further assigns, transfers, gives and grants unto said Cherry all the rights it owns or may own under Article I of said contract with the Republic of Colombia, also all rights and benefits (62) accruing under Article VII.; all rights and benefits accruing under Article VIII.; also all rights and benefits accruing under Article X.; all rights and benefits accruing under Article XV.; also all rights and benefits accruing under Article XVI.; also all rights and benefits accruing under Article XXII.; also all rights and benefits accruing under Article XXIII.; also all rights and benefits accruing under Article XXIV.; also all right, title and interest that the party of the second part may have in the sum of fifty thousand dollars ($50,000) mentioned in Article XXV., and all of the rights and benefits accruing from said fifty thousand dollars ($50,000) according to Article XXVI.; all rights and benefits under Article XXVIII.; all rights and benefits under Article XXIX.; all rights and benefits under Article XXX.; all rights and benefits under Article XXXIII.; all rights and benefits uuder Article XXXVII.; also all rights and benefits under Article XXXVIII.; and also all other rights, benefits and privileges derived or to be derived, directly or indirectly, from or under said concession or contract.

Fifth. And in further consideration of the above the said James L. Cherry hereby further agrees for himself or his assigns that he will construct, build and equip said road in full conformity to the obligations and limitations contained in said contract of August 27th, 1890, and will, at his own expense, or at that of his assigns, do all the work necessary to put said railroad into the condition necessary to safely and properly operate the same.

In witness whereof the parties hereto have hereunto set their hands and seal this 29th day of November, 1890.

CAUCA COMPANY,

[L. S.] By ROBERT W. PATTERSON,
President.

GEORGE RUSSELL, Sec'y.

JAMES L. CHERRY,

[L. S.] By D. CALMAN, Atty.

(63) STATE OF NEW YORK, } ss.:
City and County of New York, }

I, Leo G. Rosenblatt, a notary public in and for the county and State aforesaid, hereby certify that on the 27th day of January, 1891, there appeared before me in my said county Robert W. Patterson, President of the Cauca Company; George Russell, Secretary of the said Cauca Company, and David Calman, the attorney in fact of James L. Cherry, the said Patterson, Russell and Calman being the same persons who executed the foregoing instrument; the said Patterson and Russell on behalf of and for the Cauca Company, and the said Calman in the name and on behalf of James L. Cherry, and each of them respectively acknowledged that he executed the same for and on behalf respectively of the corporation and the person in whose name he so executed the same, and acknowledged the same for himself and for and on behalf of such corporation and person respectively, and the said Robert W. Patterson, being first duly sworn, did depose and say that he is the president of the said company; that he resides in the city of ; that he knows the corporate seal of said company, and that the seal affixed to the foregoing instrument is such corporate seal and was so affixed by order of the Board of said company; and the said George Russell, being also first duly sworn, did depose and say that he is the Secretary of said company; that he resides in the city of Brooklyn; that he knows the corporate seal of said company, and that the seal affixed to the foregoing instrument is such corporate seal and was so affixed by order of said Board of Directors. And the said David Calman, being also first duly sworn, did depose and say that he is the attorney in fact of James L. Cherry, and that he executed the said instrument in the name of the said Cherry, and on his behalf, by virtue of the power of
(64) attorney in writing, duly executed and granted unto him, the said David Calman, by the said James L. Cherry, and that he, the said Calman, resides in the city of New York.

Given under my hand and official seal this 27th day of January, 1891.

LEO G. ROSENBLATT,
Notary Public,
New Yourk County.

STATE OF NEW YORK, City and County of New York, } ss:

DAVID CALMAN, being duly sworn, deposes and says: I am the person who executed the original of the within agreement as attorney for James L. Cherry, by virtue of power of attorney, executed to me by said Cherry on the 29th day of November, 1890, and I hereby certify that the within copy is a true, correct and perfect copy of the original agreement, so executed by me, as attorney for said James L. Cherry

DAVID CALMAN.

Sworn to before me this 18th day of April, 1891.

[L. S.]

GEORGE RUSSELL,
Notary Public,
Kings County.

Certificate filed in N. Y. Co.

STATE OF NEW YORK, City and County of New York, } ss:

I, George Russell, a Notary Public, duly appointed according to the laws of the State of New York, and qualified to act in the counties of New York and Kings, do hereby certify that I have carefully compared the above copy of an agreement between James L. Cherry and the (65) Cauca Company with the original thereof, and that the same is in all respects a true, perfect and correct copy of said original.

In witness whereof, I have hereunto set my hand and official seal this eighteenth day of April, 1891.

[L. S.]

GEORGE RUSSELL,
Notary Public,
Kings County.

Certificate filed in N. Y. Co.

Complainant's Exhibit No. 8

AGREEMENT BETWEEN JAMES L. CHERRY AND THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY.

This agreement, made this 29th day of November, 1890, between James L. Cherry, of San Francisco, California, party of the first part, and the Colombian Construction

and Improvement Company, a corporation duly organized under the laws of the State of West Virginia.

Witnesseth as follows:

That in consideration of the agreement hereinafter set forth, and of other valuable considerations moving from the parties hereto, the parties hereto have agreed as follows:

First. That the said James L. Cherry hereby assigns, sets over and transfers unto said Colombian Construction and Improvement Company all his right, title and interests in and to a certain contract entered into by him with the Cauca Company, bearing date the day of November, 1890.

Second. And the party of the second part agrees in consideration of the transfer of said contract, and all the (66) benefits thereunder, that it will pay to said Cherry the sum of one million, eight hundred and eighty thousand (1,880,000) dollars in full paid stock of the said party of the second part, the Colombian Construction and Improvement Company; and also shall cause to be paid to said Cherry within four years from the date hereof, the sum of one hundred and thirty-five thousand dollars ($135,000) in cash, or the equivalent of said sum in bonds of said Cauca Company, at the option of said Cherry, said sum of money or bonds to be paid in the following manner, viz.: Said Cherry shall receive, if desires the cash, ten per cent. (10%) of all the cash realized from the sale of such bonds from time to time up to said amount of one hundred and thirty-five thousand dollars ($135,000); if he elects to receive bonds, he shall receive ten per cent. (10%) of all bonds issued, until the amount so received by him shall equal in value one hundred and thirty-five thousand dollars ($135,000) in cash, at the price at which said bonds are issued to the public, all of such cash or bonds to be paid fully within four years.

And it is further agreed that said Cherry shall be employed as chief constructor and contractor for the construction of said road, until said above-named sums are fully paid.

And in consideration of the above agreement, said Cherry further agrees to return to the company, for the benefit of its treasury, the sum of eight hundred thousand dollars ($800,000) of full paid stock of said Colombian Construction and Improvement Company.

Third. And said Colombian Construction and Improvement Company further agrees, that in consideration of the

above agreements it will assume all the duties and obligations incumbent upon said Cherry under said contract with said Cauca Company, and will hold him free and harmless from all loss and damage thereunder.

(67) In witness whereof the parties hereto have hereunto set their hands and seals this 29th day of November, 1890.

COLOMBIAN CONSTRUCTION &
IMPROVEMENT CO.
By H. A. RICHARDSON,
President.
C. F. SCHRAMME,
Secretary & Treasurer.
JAMES L. CHERRY.
By D. CALMAN, Atty.

Complainant's Exhibit No. 9.

IN THE CIRCUIT COURT OF THE UNITED STATES—DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
v.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

STATE OF NEW YORK,
City and County of New York, } *ss.*

Francisco J. Cisneros, being duly sworn, deposes and says: That he is a citizen of the United States, domiciled in the State of New York, but a resident of the Republic of Colombia, in which country he has resided for twenty-four years last past, except when absent therefrom on business. That he is sixty-one years of age, and is a civil engineer by profession, and has practiced that profession for forty years last past, and is now actively engaged in the practice of his profession. That he is the person appointed as the agent of the Republic of Colombia to represent it before Lewis M. Haupt, Christian F. Schramme and Manuel H. Pena, arbitrators appointed by the agreement of January 4th, (68) 1897, between the Republic of Colombia and the Cauca Company. That he has read the bill of complaint of the Republic of Colombia in the above entitled cause, and has personal knowledge of the facts therein averred, and that the same are true. This affiant is familiar with the location of the route of the railroad described in the contract of August 27th, 1890, referred to in the second paragraph of said bill, and made Exhibit 4 to said bill.

That the road mentioned in paragraph one of said bill, as owned and operated by the complainant on August 27th, 1890, was constructed by this affiant, and on August 27th, 1890, a portion thereof, from Buenaventura to Cordova, twenty kilometers and two hundred and forty meters in length, was in actual operation, and the additional part, six kilometers and eight hundred and sixty meters in length, was completed, but not in actual operation, and two kilometers six hundred and forty meters additional was partially completed. That the said road is what is known as a narrow gauge road, the distance between rails being thirty-six inches. That the standard gauge in this country is four feet and eight and a half inches. That from the point to which said road was completed up to August 27th, 1890, to-wit: to a point twanty-seven kilometers and one hundred meters from Buenaventura, to a place called San Jose, a distance of nine kilometers and six hundred and forty meters, including the two kilometers and six hundred and fifty meters which had been partially completed prior to August 27th, 1890, the said road has since 1890 been completed and opened to traffic, and that the said road along the route mentioned in the said contract of August 27th, 1890, has not yet been completed and opened to traffic to Cali, not to any point beyond San Jose, and there are no rails or cross-ties laid beyond said San Jose. That the gauge from Buenaventura to Cordova has not been changed, but is still only thirty-six inches wide, and the gauge of the portion from Cordova to San Jose is only thirty-six inches wide, and not one meter in width, as provided in (69) the contract of August 27th, 1890, between the Republic of Colombia and James L. Cherry, mentioned in paragraph two of said bill. That the route mentioned in said contract from Buenaventura to Cali is about one hundred and sixty kilometers or ninety-eight and forty-eight hundredths miles in length, and the length of the entire route from Buenaventura to Manizales is about three hundred miles. That the only portion of said route which has been completed and opened to traffic since August 27th, 1890, is the said portion from Cordova to San Jose, herein before mentioned and described, six kilometers and eight hundred and sixty meters whereof was completed on and prior to August 27th, 1890, though not opened to traffic, and *and* two kilometers and six hundred and forty meters whereof was partially completed as above stated.

(Signed.) FRANCISCO J. CISNEROS.

Sworn to before me by Francisco J. Cisneros, the affiant, who is known to me, at the city of New York, this sixth day of December, 1897 (the words "additional was,"

"the said road," "since 1890," "and" interlined in second page before execution).

(Signed.) ANTONIO C. GONZALES,

[Notarial Seal.] Notary Public, New York Co.

Complainant's Exhibit No. 10.

LAW FORFEITING CONCESSION.

LAW 60.

(16 November, 1894.)

THE CONGRESS OF COLOMBIA DECREES.

Article 1st. The Government will proceed to decree lapsed the contract of 27 August, 1890, referring to construction of the railroad from Buenaventura to Manizales, inasmuch as Congress does not approve of the contract 98 (70) of 1892, carried out between the Minister of Public Works and Mr. Victor Mallarino, general representative of the Cauca Railroad Company, which deals with the extension of time for the construction of the said railroad.

Article 2. The Government is hereby authorized to continue the construction of this railroad by administration or by a contract which shall be submitted to the approval of Congress.

Article 3. The 50% of the products of the Custom House of Buenaventura and Tumaco shall continue to be used for the purpose of finishing the railroad from the Port of Buenaventura to the town of Cali, in accordance with Article 10 of contract of 18th of October, 1890.

Dated at Bogota, 16th November, 1894.

President of the Senate, Antonio Roldan; President of the House of Representatives, Narciso Garcia Medina; Secretary of the Senate, Camillo Sanchez; Secretary of House of Representatives, Miguel A. Penaredonda.

Executive Government. Bogota, November 16th, 1894. This decree is hereby ordered to be published and put into effect. (L. S.) M. A. Caro. The Minister of the Treasury in charge of Office of Public Works.

MIGUEL ABADIA MENDEZ.

Complainant's Exhibit No. II.

LEY 41 DE 1896.

(20 de Octubre.)

por la cual se dan varias autorizaciones al Gobierno.

El Congreso de Colombia.

DECRETA:

Artículo 1°. Autorízase plenamente al Poder Ejecutivo (71) para que pueda transigir de modo equitativo con el Concesionario del Ferrocarril de Buenaventura á Manizales, ó con quien sus derechos represente, las cuestiones ó diferencias que se susciten por consecuencia de la declaratoria de caducidad del privilegio á que se refiere la Resolución número 9 de 16 de Octubre de 1890, ó con motivo de las estipulaciones del contrato de 27 de Agosto de 1890, aprobado por la Ley 16 del mismo año.

En todo caso será condición del arreglo amigable, la renuncia por parte del Concesionario, ó de quien sus derechos represente, del privilegio otorgado y la consiguiente é inmediata entrega del Ferrocarril con todo su material fijo y rodante, edificios, herramientas y demás dependencias.

Artículo 2°. Si no se llegare por cualquier circunstancia á un acomodamiento justo y conveniente, el Poder Ejecutivo procederá á dar cumplimiento á lo que le corresponde para constituir el Tribunal de Arbitramento, de conformidad con el contrato y como consecuencia de la Resolución de 23 de Enero último, aceptada por el Sr. James L. Cherry, como apoderado de la "Cauca Company."

En caso de que el Tribunal no pudiere constituirse dentro de treinta días, ó no llenare dentro de sesenta más su cometido, el Gobierno comunicará instrucciones al Procurador General de la Nación, para que, sin pérdida de tiempo, promueva las acciones judiciales á que haya lugar, para exigir el cumplimiento del contrato, con indemnización de perjuicios, ó su resolucion por no haberse cumplido por parte del Concesionario las obligaciones que contrajo con el Gobierno, y también para que promueva las acciones legales conducentes á impedir que el juicio sea ilusorio.

Artículo 3°. El arreglo amigable que el Poder Ejecutivo celebre en virtud de la presente Ley, no necesitará para su validez de la posterior aprobación del Congreso.

Artículo 4°. Queda autorizado el Gobierno para determinar la forma y medios en que deban hacerse los pagos á que hubiere lugar, y las sumas necesarias al efecto se considerarán incluídas en los Presupuestos de los bienios correspondientes.

(72) Artículo 5°. El Poder Ejecutivo queda igualmente autorizado para continuar la construcción del citado Ferrocarril, de la manera que le pareciere más conveniente, si se obtiene, por

cualquiera de los medios indicados en los artículos anteriores, la extinción del privilegio concedido por la Ley 16 de 1890.

En caso de contrato, éste será celebrado con particulares ó Compañías, de las cuales podrán hacer parte como accionistas los Gobiernos de la Nación y del Departamento del Cauca, y los contratos no necesitarán de aprobación ulterior del Congreso, si se ajustaren á lo prescrito en las Leyes 145 de 1888 y 104 de 1892.

Artículo 6°. Consérvase la subvención de cincuenta por ciento (50%) del producto de las Aduanas de Buenaventura y Tumaco, aplicable á la terminación del Ferrocarril en referencia.

El Gobierno no podrá dar, en consecuencia, otra inversión los fondos de que se trata.

Artículo 7°. La presente Ley comenzará á regir ocho días después de sancionada.

Dada en Bogotá, á trece de Octubre de mil ochocientos noventa y seis.

El Presidente del Senado,
MIGUEL GUERRERO S.

El Presidente de la Cámara de Representantes,
MARCELIANO VARGAS.

El Secretario del Senado,
CAMILO SANCHEZ.

El Secretario de la Cámara de Representantes,
MIGUEL A. PEÑAREDONDA.

GOBIERNO EJECUTIVO.

Bogotá, 20 de Octubre de 1896.

Publíquese y ejecútese,
(L. S.) M. A. CARO.

El Ministro de Hacienda,
RUPERTO FERREIRA.

Complainant's Exhibit No. II.

(73) [English Translation.]

LAW 41 OF 1896,

(October 20th),

by which various powers or faculties are given the Govment.

The Congress of Colombia.

DECREES.

Article 1. The Executive is hereby fully empowered to equitably compromise with the grantee of the railroad from Buenaventura to Manizales or his lawful representative, the questions of differences that may arise in consequence

of the declaration of lapse of the franchise referred to in the Resolution No. 9 of October 16th, 1895, or by reason of the stipulations of the contract of August 27th, 1890, approved by Law 16 of the same year.

In any event, the condition of the friendly settlement shall be the renunciation, on the part of the grantee or his representative, of the franchise granted and the consequent and immediate delivery of the railroad and all its fixed and rolling stock, buildings, tools, and other appurtenances.

Article 2. If, by any circumstance whatsoever no just and convenient understanding is reached, the Executive shall proceed to carry out whatever may be required for constituting the Court of Arbitration, in accordance with the contract and as a result of the resolution of 23 of January last, accepted by Mr. James L. Cherry, as attorney of "The Cauca Company.

In case the tribunal could not be constituted within thirty days, or should fail to accomplish its object within sixty days more, the Government shall instruct the Attor-
(74) ney General of the Nation to institute, without loss of time, whatever judicial proceedings may be necessary to exact the fulfilment of the contract, together with indemnification for damages, or obtain its resolution by reason of the failure of the grantee to fulfil the obligations entered into by him with the Government, and also to institute legal proceedings tending to prevent the judgment from being futile.

Article 3. The friendly agreement which the Executive may arrive at by virtue of the present decree, shall not require for its validity, the subsequent approval of Congress.

Article 4. The Government is hereby authorized to determine the form and means whereby the necessary payments may be made and the sums for said purpose shall be considered as included in the biennial budgets.

Article 5. The Executive is also hereby authorized to continue the construction of said railroad, in the manner he may judge most convenient, if by any of the means indicated in the preceding articles, the extinction of the franchise granted by Law 16 of 1890, is secured.

In case there should be a contract, this shall be affected with private individuals or companies of which the Government of the Nation and of the Department of Cauca can form part as stockholders, and the contracts will not require the subsequent approval of Congress, if they are in perfect accord with the terms of decrees 145 of 1888 and 104 of 1892.

Article 6. The subsidy of fifty per cent. (50%) of the

customs revenue of Buenaventura and Tumaco is hereby maintained, same to be applied to the termination of said railroad.

The Government, therefore, shall not use said funds for any other purpose.

Article 7. The present law shall be declared in force eight days after its approval.

(75) Issued in Bogota, on the thirteenth day of October, eighteen hundred and ninety-six.

The President of the Senate,
MIGUEL GUERRERO, S.

The President of the House of Representatives,
MARCELIANO VARGAS.

The Secretary of the Senate,
CAMILO SANCHEZ.

The Secretary of the House of Representatives,
MIGUEL A. PENAREDONA.

EXECUTIVE GOVERNMENT.

BOGOTA, 20th October, 1896.

Let it be published and executed.

[L. S.] M. A. CARO.

The Secretary of the Treasury,
RUPERTO FERREIRA.

Complainant's Exhibit No. 12.

Convenio por el cual se pone término á las diferencias ocurridas entre el Gobierno y "The Cauca Company" con motivo del contrato sobre construcción del Férro Carril del Cauca.

Los infrascritos, á Saber: Manuel Esguerra, en su carácter de Ministro de Hacienda, autorizado por el Excmo. Señor Vicepresidente de la Republica, encargado del Poder Ejecutivo, que en adelante se llamará "El Gobierno de Colombia," por una parte y James L. Cherry, en su carácter de Administrador General, Representante y Apoderado de "The Cauca Company," organizada en New York para llevar á cabo la construcción del (76) Férro Carril del Cauca, que en adelante se llamará "La Compañía," por otra, de conformidad con las bases de convenio pactado el día 27 de Noviembre de 1896 entre el Gobierno de Colombia y Cherry en el carácter indicado, bases acordadas en virtud de lo dispuesto en el Articulo 1° de la Ley 41 de 1896, y en vista del poder general otorgado á Cherry por el Presidente de "The Cauca Company," ante el Señor José C. Morales, Notario público de la ciudad de New York, el 31 de Diciembre de 1890, y del especial otorgado al mismo también por el Presidente de "The Cauca Company," el dia 23 de Octubre de 1895, ante el Señor Julio C. Ponce de Léon, Notario público de la

misma ciudad de New York, han celebrado el siguiente Convenio:

Art°. 1°. El Gobierno de Colombia y la Compañía transigen y declaran terminadas todas las diferencias pendientes entre ambas partes por razón del contrato aprobado por la Ley 16 de 1890, "Sobre construcción del Férro Carril de Buenaventura á Manizales," mediante las estipulaciones consignadas en los Artículos siguientes:

Art°. 2°. La Compañía renuncia en absoluto al privilegio de que trata el Artículo 1° del contrato aprobado por la Ley 16 de 1890 y entregará al Gobierno de Colombia, dentro de los quince días siguientes al en que haya sido aprobado este convenio el Férro Carril del Cauca, con todo su material fijo y rodante existente, obras, edificios, herramientas, útiles de toda clase, anexidades, &c., &c. En cambio, el Gobierno de Colombia pagará á la Compañía una justa indemnizacion por las obras y trabajos que la Compañía haya ejecutado durante el tiempo en que la empresa ha estado á su cargo y por los materiales rodantes y demás elementos que haya introducido con destino al Férro Carril y que existan en la actualidad.

Art°. 3°. El Gobierno de Colombia y la Compañía reconocen de antemano como justa y única indemnización una suma que equivalga á la que la Compañía compruebe haber (77) costeado en los trabajos y obras, ejecutados por ella en la construccion de la expresada vía férrea y en los materiales rodantes, herramientas, &c., &c., introducidos con destino á la misma vía.

Art°. 4°. Para fijar la indemnización de que tratan los artículos anteriores, el Gobierno de Colombia y la Compañía convienen en constituir una Comisión especial compuesta de tres (3) miembros nombrados así: Uno por el Ministro de Hacienda de Colombia, otro por el apoderado de "The Cauca Company," y el tercero, de comun acuerdo, por el Señor Secretario de Estado de los Estados Unidos de América y el Señor Ministro de Colombia en Washington.

Art°. 5°. El Gobierno de Colombia y la Compañía, facultan á la Comisión que se constituirá de la manera antes indicada para que fije la indemnización de que antes se ha hablado, debiendo con este fin tasar tal Comisión, las obras, trabajos y materiales aludidos. Para ésto, y para fijar así la consiguiente indemnización, la Comisión deberá examinar y apreciar los libros y cuentas de "The Cauca Company" en New York los documentos que el Gobierno de Colombia y la Compañía la presenten en apoyo de sus respectivos derechos y los que la misma Comisión exija, inspeccionará, sobre el terreno las obras y trabajos del Férro Carril y los materiales rodantes, á fin de hacer las confrontaciones y verificaciones necesarias para la determinación de los hechos, que deben servir de base á la fijación de la indemnización, pudiendo para esto examinar testigos y nombrar

peritos; fijará un término prudente para oir á las partes, estimar las alegaciones de éstas y las pruebas ó datos que presenten referentes á la determinación de las obras, trabajos y materiales precitados, á la tasacion de ellos y á la figación de la indemnización consiguiente; y fijará el procedimiento que debe seguir en el ejercicio de las facultades que se le confieren, tanto en relación con sus propios actos cuanto en relación con las gestiones de las partes.

(78) Art. 6°. Si cualquiera de los Miembros de la Comisión rehusare ó renunciare el cargo ó cesare de funcionar por cualquier motivo, no por eso se anularán las actuaciones de aquélla sino que se procederá á reintegrarla por nuevo nombramiento, que dentro de treinta días contados desde el en que ocurra la falta, hará la parte que nombró al miembro que faltare. Si dicha parte no cumpliere con esa obligación procederan, de comun acuerdo, á nombrar la persona que debe llenar la vacante, el Señor Secretario de Estado de los Estados Unidos de América y el Señor Ministro de Colombia en Washington.

Art. 7°. El Gobierno de Colombia y "The Cauca Company" gestionarán ante la Comisión por sí mismos ó por medio de apoderados ó representantes.

Art. 8°. La Comisión para llevar a cabo las diligencias que se la señalan en este Convenio y para dictar su decisión, se reunirá en el ó los lugares que ella elija; y dispondrá para ello del término de ciento cincuenta (150) días, contados desde el de su instalación, prorrogable por sesenta (60) más, caso de que ocurran demoras justificativas.

Art. 9°. La decisión de la Comisión será definitiva é inapelable; y el monto de la indemnización, que ella fije será pagado á la Compañía como se dispone en el Artículo siguiente.

Art. 10. El Gobierno de Colombia, calculando aproximativamente que "The Cauca Company" ha invertido en la obra del Férro Carril del Cauca una suma como de doscientos mil dollars (al mismo tiempo que la Compañía considera esta suma como muy inferior al justo precio de las obras y trabajos por ella ejecutados) y con el fin de obtener la inmediata entrega, del Ferro Carril con arreglo á la última parte del Artículo primero de la Ley 41 de 1896, anticipa á la Compañía la expresada suma de doscientos mil dollars ($200,000,000), á cuenta del monto de la indemnización que la Comisión fije, la cual suma declara la Compañía haber recibido del Gobierno de Colombia á su entera satisfacción. Si la indemnización que se fijare conforme á este convenio fuere mayor que la suma de doscientos mil dollars, el Gobierno pagará el excedente, en el (79) tiempo, la forma y terminos que determine la Comisión.

Art°. 11. La entrega de que trata el Artículo 2° será hecha por la Compañía, á la persona ó á la entidad que designe el Gobierno, por riguroso inventario, en el cual deben hacerse las especificaciones y anotaciones del caso á fin de que en tal inven-

tario quede claramente determinado el estado de todo lo que se entrega.

Art°. 12. Los gastos de personal, movilización y material de la Comisión serán anticipados de por mitad entre la Compañía y el Gobierno de Colombia; y la Comisión determinará si tales gastos corresponde hacerlos á una de las partes ó á ambas.

Art°. 13. Cumplidas por la Compañía y por el Gobierno las estipulaciones consignadas en este Convenio, los dos partes quedarán en paz y salvo, terminadas las diferencias que entre ellas se han suscitado y extinguidos en absoluto los derechos y obligaciones emanados del contrato aprobado por la Ley 16 de 1890, citado antes. En consecuencia, la Compañía renuncia desde ahora á toda reclamación contra el Gobierno de Colombia, con motivo del contrato expresado.

Art°. 14. Dentro de los ocho días siguientes á la aprobación de este Convenio nombrarán el Ministro de Hacienda de Colombia y la Compañía el miembro de la Comisión que á cada cual corresponde.

Art°. 15. La Comisión que se constituye por el presente Convenio deberá instalarse en New York dentro de los sesenta (60) días siguientes al de la aprobación del mismo, término que podrá prorrogarse por treinta (30) días más caso de que ocurran demoras justificativas.

Art°. 16. Para que el presente Convenio surta efecto necesita de la aprobación del Excmo. Señor Vice-presidente de la República encargado del Poder Ejecutivo.

(80) En fé de la cual se firma el presente, en la ciudad de Bogotá, á los cuatro días del mes de Enero de mil ochocientos noventa y siete.

MANUEL ESGUERRA.
J. L. CHERRY,
Apoderado, Administrador General y Representante de The Cauca Company.

GOBIERNO EJECUTIVO, BOGOTA,
Enero 4 de 1897.

Aprobado: M. A. CARO.

El Ministro de Hacienda, MANUEL ESGUERRA.

MINISTERIO DE HACIENDA, BOGOTA,
Enero 25 de 1897.

Es fiel copia de su original.
El Sub-secretario,
JUSTINIANO CANON.

LEGATION OF COLOMBIA, WASHINGTON.

I, Julio Rengifo, Charge d' Affairs *ad interim* of the Republic of Colombia at Washington, hereby certify that the signature of Justiniano Canon appended to the above certificate is his true and genuine signature, that said Justiniano Canon was, on the 25th day of January, 1897, the Under-secretary of the Treasury of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said Treasury Department, and his act in that behalf is entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 6th day of December, 1897.

[Seal of the Colombian Legation.]

JULIO RENGIFO,
Charge d' Affairs *ad intrim*.

Complainant's Exhibit No. 12.

(81) (English Translation.)

AGREEMENT OF JANUARY 4, 1897, FOR THE SUBMISSION TO ARBITRATION OF THE CLAIMS OF THE CAUCA COMPANY AGAINST COLOMBIA.

Agreement for the settlement of the differences existing between the Government and "The Cauca Company" in connection with the contract for the construction of the Cauca Railway.

The undersigned, that is to say, Manuel Esguerra, acting as the Secretary of the Treasury, authorized by His Excellency , the vice-president of the Republic, acting as the executive hereinafter designated "The Government of Colombia," of the one part, and James L. Cherry, acting as general manager, agent and attorney-in-fact of "The Cauca Company," organized in New York to construct the Cauca Railway hereinafter designated as the "The Company," of the other part, in conformity with the bases of the agreement stipulated on the 27th day of November, 1896, between the Government of Colombia and Cherry, acting as aforesaid, bases consented to under the provisions of Article I of Law 41 of the year 1896, and under tee general power of attorney made to Cherry by the president of "The Cauca Company" before Mr. Jose G. Morales, notary public of the city of New York, on the 31st day of December, 1890, and under the special power of attorney made also to the said Cherry by the president of "The Cauca Company" on the 23rd day of October, 1895, before Mr.

Julio C. Ponce de Leon, notary public of the city of New York, have entered into the following agreement:

Article I. The Government of Columbia and the Company compromise and declare settled all pending differences both parties in connection with the contract approved (82) by Law 16 of the year 1890, regarding the construction of a railway from Buenaventura to Manizales" by means of the stipulations set forth in the following articles:

Article II. The company surrenders absolutely the concession to which Article I. of the contract approved by Law 16 of the year 1890, relates, and, within fifteen days next following the day on which this agreement shall be approved, shall deliver to the Government of Colombia the Cauca Railway with all its fixed plant, rolling stock on hand, words [works], buildings, tools, utensils of all kinds, appurtenances, etc., etc. In consideration therefor the Government of Colombia is to pay to the company a just indemnity for all the works constructed by the company during the time the undertaking has been in its charge and for such rolling stock and other things imported by the company for use on the railway and which are now in existence.

Article III. The Government of Colombia and the company accept in advance as the just and only indemnity a sum which shall be the equivalent of what the company shall prove it has expended on the works executed by it in the construction of the said railway and for rolling stock tools, etc., etc., imported for use on such railway.

Article IV. In order to determine the indemnity to which the foregoing articles relate the Government of Colombia and the company agree to constitute a special commission, to be composed of three (3) members who are to be named in the following manner: One by the Secretary of the Treasury of Colombia, another by the Attorney in Fact of "The Cauca Company," and the third to be agreed upon by the Secretary of State of the United States of America and the Minister of Colombia at Washington.

Article V. The Government of Colombia and the company hereby authorize the commission, to be constituted in the manner hereinbefore indicated, to fix the indemnity already mentioned and such commission shall appraise the structures, works and materials referred to. For such pur- (83) pose and in order to thus determine the consequent indemnity, the commission shall examine and consider the

books and accounts of "The Cauca Company" at New York, the documents that the Government of Colombia and the company present to it in support of their respective claims, and such as the Commission may demand; it shall inspect on the ground the works of the railroad and the rolling stock, in order to make the necessary checks and verifications for the determination of the facts which are to serve as the basis for fixing the indemnity, and shall have the right for such purpose to examine witnesses and appoint experts; it shall fix a reasonable period for the parties to be heard, to consider the proofs or data that may be presented to them for the determination of the structures, works and materials aforesaid, the appraisal of the same and for the fixing of the consequent indemnity; and it shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves.

Article VI. Should any of the members of the Commission decline or resign from the position, or for any reason cease to act the proceedings of the Commission shall not thereby be invalidated, but the Commission shall be restored by a new appointment, which is to be made by the party who appointed the member who fails to act, within thirty days, counting from the day on which such failure to act shall occur. If such party shall not comply with such obligations, the Secretary of State of the United States of America and the Minister of Colombia at Washington shall proceed by agreement to appoint the person to fill such vacancy.

Article VII. The Government of Colombia and "The Cauca Company" shall appear before the Commission in person or by attorneys-in-fact or agents.

Article VIII. In order to carry into execution the proceedings fixed by this agreement and to render its de-
(84) cision, the Commission shall meet in the place or places selected by it; and for such purpose shall have one hundred and fifty (150) days counting from its installation, which may be extend sixty (60) days more in case justifiable grounds of delay shall arise.

Article IX. The decision of the commission shall be final and without appeal and the amount of the indemnity fixed by the commission shall be payable to the Company as provided in the next following article:

Article X. The Government of Colombia calculating

approximately that "The Cauca Company" has disbursed in the work on the Cauca Rairway the sum of about two hundred thousand dollars ($200,000)—the company considering, however, such sum to be much less than the just price of the works executed by it—for the purpose of obtaining the immediate delivery of the railway, in conformity with the last part of Article I of Law 41 of 1896, pays in advance to the company the said sum of two hundred thousand dollars ($200,000) in gold on account of such amount of indemnity as the commission may fix, which sum the company acknowleges having received from the Government of Colombia to its entire satisfaction. In case such indemnity as may be fixed in conformity with this agreement shall be greater than the sum of two hundred thousand dollars, the Government is to pay the excess at such time, in such manner and on such terms as may be determined by the commission.

Article XI. The delivery to which Article II. relates shall be made by the company to the person or to the representative designated by the Government under a strict inventory in which must appear the specifications and reference relating to the matter, so that in the inventories the condition of everything that is delivered shall be clearly set forth.

Article XII. The expenses of the personnel, mobilization and plant of the commission shall be paid in advance, (85) in equal shares by the company and the Government of Colombia, and the commission shall decide whether such expenses are to be charged against one or both of the parties.

Article XIII. Upon the performance by the company and the Government of the stipulations set forth in this agreement both parties shall be discharged and released, the differences that have arisen between them shall be at an end and the rights and obligations springing from the contract approved by Law 16 of 1890, hereinbefore referred to, shall be extinguished. For such reason the company, from now now henceforth, waives the right to claim against the Government of Colombia under the contract aforesaid.

Article XIV. Within eight days next following the ratification of this agreement the Secretary of the Treasury of Colombia and the Company shall nominate that member of the Commission which each is to appoint.

Article XV. The Commission which is constituted by

this present agreement shall meet and organize at New York within sixty days next following the day of the ratification of this agreement, which period may be extended for thirty (30) days more in case justifiable grounds of delay shall arise.

Article XVI. In order that this present agreement shall be valid the ratification of His Excellency the Vice-President of the Republic, acting as Executive, shall be had.

In testimony whereof this present is signed at the city of Bogota on the 4th day of January, 1897.

MANUEL ESGUERRA.
J. L. CHERRY,

Attorney in fact, General Manager and Agent of "The Cauca Company."

Executive Department. Bogota, January 4th, 1897.

Approved:

M. A. CARO,
The Secretary of the Treasury,
MANUEL ESGUERRA.

(86) DEPARTMENT OF THE TREASURY.

Bogato, January 25, 1897.

This is a faithful copy of its original.

The Under Secretary,

JUSTINIANO CANON.

LEGATION OF COLOMBIA, WASHINGTON.

I, Julio Rengifo, Charge d' Affairs *ad interim* of the Republic of Colombia at Washington, hereby certify that the signature of Justiniano Canon appended to the above certificate is his true and genuine signature, that said Justiniano Canon was on the 27th day of January, 1897, the Under-Secretary of the Treasury of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said Treasury Department, and his act in that behalf is entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 6th day of December, 1897.

[Seal of the Colombian Legation.] JULIO RENGIFO,
Charge d' Affaires ad interim.

Complainant's Exhibit No. 13.

APPOINTMENT OF SENOR PENA.

(Translation.)

DECREE No. 2 OF 1897.

(11th January)

By which an appointment is made.

The Vice-President of the Republic in charge of the Executive Power,

In view of the Convention entered into under date of (87) the 4th instant, between the Government and Mr. James L. Cherry, representative and attorney of the Cauca Company, and in compliance with the provision of article 14 of said convention,

DECREES:

Senor Manuel H. Pena is hereby appointed a member of the Commission that is to determine the indemnity to which the Cauca Company is entitled according to aforesaid convention.

Given at Bogota on the 11th day of January, 1897.

MANUEL ESGUERRA,
Minister of the Treasury.

M. A. Caro

Complainant's Exhibit No. 14.

APPOINTMENT OF MR. SCHRAMME.

To the Minister of the Treasury,
Present.

In my capacity as attorney in fact, representative and manager of the Cauca Company, and agreeably to the provisions of Article XIV. of the convention of 4th inst. by which the differences pending between the Government of Colombia and the company I represent were settled, I beg leave to inform your Excellency that on behalf of said company, I have appointed Mr. Christian F. Schramme, as a Member of the Commission which is to decide the matter according to aforesaid convention.

Trusting that this appointment may prove satisfactory to your Excellency,

I have the honor of subscribing myself
Your very obt. servt,

J. L. CHERRY,
Attorney of the Cauca Company.

Bogota, January 5th, 1897.

(88) TREASURY DEPARTMENT,

Bogota, 11th January, 1897.

Mr. Christian F. Schramme is hereby recognized as a member of the commission referred to in the Convention of 4th inst. on behalf of the Cauca Company.

MANUEL ESGUERRA, Minister.

Complainant's Exhibit No. 15.

APPOINTMENT OF PROF. HAUPT.

Know ye, that whereas, by articles of agreement between the Government of Colombia, of the first part, and James L. Cherry, General Manager, representative and attorney of the Cauca Company, organized in New York to effect the construction of the Cauca Railway, signed in the city of Bogota on the 4th of January, 1897, it was stipulated in settlement of the differences which had arisen between the contracting parties that the amount of indemnity to be paid by the former to the latter, in consideration of the surrender of the railway aforesaid, with its equipment and stock, shall be determined by a commission of three members, one to be appointed by the Minister of Finance of Colombia, another by the attorney of the Cauca Company, and the third in common accord by the Secretary of State of the United States of America, and the diplomatic representative of Colombia in Washington.

And whereas the diplomatic representative of Colombia in Washington did, on the 8th day of March, 1897, communicate to the Secretary of State of the United States an authenticated copy of the aforesaid articles of agreement and requested the co-operation of the Secretary of State in the choice of the third member of the Commission to be appointed under said articles of agreement.

(89) Now, therefore, we, John Sherman, Secretary of State of the United States of America, and Julio Rengifo, Charge d'Affaires, *ad interim*, of the Republic of Colombia, having conferred with respect to the selection of such third member of the Commission to be organized in pursuance of said articles of agreement, have made choice of, and do hereby appoint as such third member of said Commission, Lewis M. Haupt, a citizen of the United States, residing in Philadelphia, Civil Engineer, to perform the service and duty which may be required of or devolve upon him by reason of the stipulations contained in the aforesaid articles of agreement, between the Government of Colombia and the Cauca Company signed January 4, 1897.

In witness whereof we have signed and sealed this instrument in triplicate original in the City of Washington, this 18th day of March, in the year of our Lord 1897.

JOHN SHERMAN, [L. S.]
JULIO REGNIFO, [L. S.]

Complainant's Exhibit No. 16.

PRETENDED AWARD OF LEWIS M. HAUPT AND CHRISTIAN F. SCHRAMME.

To the REPUBLIC OF COLOMBIA, THE HONORABLE JOHN SHERMAN, Secretary of State of the United States, and THE CAUCA COMPANY:

The Commission appointed under the convention of January 4th, 1897, which convention was entered into between the Republic of Colombia and the Cauca Company, having been duly organized on April 3rd, 1897, by all of the members appointed thereto—to-wit: Lewis M. Haupt, C. E.; Manuel H. Pena, C. E., and Christian F. Schramme—and having had numerous sessions thereafter, at all of which the several members appointed to the said Commission were present and participated in the proceedings taken before (90) said commission; and the said commissiod and the aforesaid several members thereof having examined the books of the Cauca Company with great care; and having heard all the witnesses produced by the Republic of Colombia and the Cauca Company, respectively; and having considered the arguments, both oral and written, and the various documents submitted for the consideration of the said commission, and all of the said commissioners having united in deliberating with respect to the matters submitted to it pursuant to the terms of the said convention; and the undersigned constituting a majority of the said commissioners, having reached the conclusion that the Cauca Company is entitled to be awarded the sum of four hundred and fifty-two thousand and forty-eight and 93–100 dollars ($452,048.93) in gold coin of the United States of America in payment of its claim against the Republic of Colombia, which claim is the subject of the aforesaid convention;

Now, therefore, We, the undersigned, commissioners constituting a majority of the aforesaid commission pursuant to the authority vested in the said commission under the terms of the aforesaid convention, hereby find that the Cauca Company is entitled to receive from the Government of Columbia, on account of the matters referred to in said convention, including the moneys already paid by the Republic of Colombia to the said Cauca Company, the sum of six hundred and fifty-two thousand and forty-eight and

93–100 dollars ($652,048.93) in gold coin of the United States of America, of which sum the said Republic of Colombia has heretofore paid to the said Cauca Company the sum of two hundred thousand dollars ($200,000), leaving due and unpaid to the Cauca Company the sum of four hundred and fifty-two thousand and forty-eight and 93–100 dollars ($452,048.93) in gold coin of the United States of America, which sum we hereby award to the said Cauca Company, and which sum is to be paid by the Republic of Colombia to the said Cauca Company in the city of New York on the 26th day of January, 1898.

(91) The Republic of Colombia is also to pay as a special allowance, as part of the costs incident to the said commission to Attorney Marcus Stine, representing the Cauca Company, the sum of ten thousand dollars ($10,000) in gold coin of the United States of America, on the 26th day of January, 1898.

In witness whereof, we have hereunto set our hands and seals this twenty-second day of October, in the year one thousand, eight hundred and ninety-seven.

(Signed.) LEWIS M. HAUPT, [Seal.]
Chairman.

(Signed.) C. F. SCHRAMME, [Seal.]

CITY AND COUNTY OF NEW YORK, } *ss:*

On this twenty-second day of October, in the year one thousand, eight hundred and ninety-seven, before me personally appeared Lewis M. Haupt, of the city of Philadelphia, and Christian F. Schramme, of New York City, to me known, and known to me to be the persons described in the foregoing instrument, and who severally acknowledged that they executed the same.

(Signed.) SAML. H. GUGGENHEIMER,
Notary Public,
New York County.

THE COLOMBIA-CAUCA CO. ARBITRATION COMMISSION.

Senor Manuel H. Pena,	Lewis M. Haupt, C. E.,	C. F. Schramme, Esq.,
Hotel San Remo,	Chairman,	55 Broadway,
New York City.	18 S. Broad St.,	New York City.
	Philadelphia.	
Attorney:	Secretary:	Attorney:
Francisco J. Cisneros, C. E.	Harold R. Miller,	Marcus Stine, Esq.,
Hotel Clarendon,	Hotel Clarendon,	20 Broad St.,
New York City.	New York City.	New York City.

New York, October 22nd, 1897.

His Excellency Don Julio Rengifo,

Charge d' Affaires (*ad interim.*)

Sir,—In accordance with a resolution passed by the

Commission, acting under the convention of January 4th, (92) 1897, between the Republic of Colombia and the Cauca Company, we have the honor to forward to you a copy of the award this day rendered by us.

Very respectively,

Your obedient servants,

(Signed.) LEWIS M. HAUPT,
Chairman.
C. F. SCHRAMME.

Complainant's Exhibit No. 17.

RELEASE OF THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY TO THE GOVERNMENT OF COLOMBIA.

Know all men by these presents, that whereas, the undersigned corporation, as agent of the Cauca Company, has constructed certain railroad extensions in the Republic of Colombia, under an agreement entitling it to receive in payment therefor all the stock and bonds of the said Cauca Company; and

Whereas, in settlement of the controversies between said last-mentioned company and the Government of the Republic of Colombia, the railroad was surrendered to the Government, and an arbitration proceeding begun, which is now pending, for the determination of the amount expended in the work; and the said Government has promised to pay unto the Cauca Company the sum so determined;

Now, therefore, in consideration of the foregoing recitals, and of valuable consideration, the receipt whereof is hereby acknowledged, the said undersigned company has released, and do hereby release the Government of the Republic of Colombia from the obligation to pay it the proceeds or any part thereof of any reward which may be made as the result of the aforesaid arbitration proceedings; and the said undersigned company hath released, and doth hereby release the said Cauca Company from any claim, demand or cause of action which at any time it may have (93) or might or could have had by reason of the work done by this company for said Cauca Company as aforesaid, and from any claim or right on its part in or to the aforesaid award, or to the proceeds thereof, except such rights therein as it may have as owner of the stocks and bonds of the Cauca Company (it being the owner of said stocks and bonds); and the undersigned corporation doth

hereby authorize the Government of the Republic of Colombia and all other person or persons whomsoever to pay the proceeds of the said award, if any, to the said Cauca Company, its officers or agents duly authorized to receive the same, without respect to any rights of the undersigned corporation, which immediately, upon due payment to the Cauca Company, will execute such further releases or acquittances as said Government may demand.

The intention of this instrument is that due payment by the Colombian Government to the Cauca Company of the amount of the aforesaid award, if any, shall operate as a release of said Government from any obligations whatever to the undersigned corporation, which has been, or at any time may have been, or may or could be, claimed against said Government by or on behalf of said undersigned corporation.

In witness whereof, the said undersigned corporation hath caused these presents to be signed by its President, and its corporate seal to be hereunto affixed, the day of July, one thousand, eight hundred and ninety-seven.

HENRY F. RICHARDSON,

President Colombian Construction & Improvement Co.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

On this twelfth day of July, in the year one thousand, eight hundred and ninety-seven, before me personally came Henry F. Richardson, to me known, and known to me to be the president of the corporation which executed the foregoing instrument, and he duly acknowledged to me that (94) he executed the same on behalf of said corporation. And the said Henry F. Richardson, being by me duly sworn, deposed and said that he is the president of said company; that he resides in the city of , in the State of ; that he has executed by a resolution of the Board of Directors thereof; that he affixed the corporate seal of said corporation by like authority; that he knows such corporate seal, and that the seal affixed to said instrument is such corporate seal.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

HENRY F. RICHARDSON.

ELIZABETH COLEMAN,
Notary Public (67),
N. Y. County.

Complainant's Exhibit No. 18.

STIPULATION AS TO COST OF CONSTRUCTION AND EQUIPMENT.

(31st day of August, 1897.)

"It is stipulated by the parties to this controversy that in fixing the amount expended by the company upon the following items of construction work and equipment on and of the Cauca railroad, the Commission shall find, in lieu of an appraisement of the items, that said company expended on said items the following sums, that is to say:

"Surveys	$22,805 00
"Completing road from K. 27.100 to K. 29.750	40,652 58
"Completing road from K. 29.750 to K. 36.740	133,546 55
"Work beyond San Jose.....	15,328 01
	$212,332 14
"Rolling stock.....	21,577 00
"Making in all.....	$233,909 14

(95) "This stipulation is without prejudice to any claim or defense of either party relative to any matter not specifically mentioned above."

Complainant's Exhibits Nos. 19, 20 and 21.

[N. B.—These exhibits, being three volumes of the Proceedings of the Arbitrators, already in print, are filed separately.]

These 3 exhibits follow EX. No. 22.

Complainant's Exhibit No. 22.

IN THE CIRCUIT COURT OF THE UNITED STATES—DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
v.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

STATE OF NEW YORK,
City and County of New York, } *ss.*

Harold R. Miller, being duly sworn, deposes and says: That he is the person who was appointed secretary to this Commission of Arbitrators, sitting under the agreement of

January 4, 1897, between the Republic of Colombia and the Cauca Company. That he discovered for the first time on Saturday, December 4, 1897, that an act of Congress of the Republic of Colombia, entitled "Ley 41 de 1896 (20 de Octubre), por la cual se dan varias autorizaciones al Gobierno," which was introduced in evidence before the arbitrators and is referred to in the proceedings, is not printed therein nor in the exhibits. The copy of the said law in the Spanish text, as officially published in the "Diario Official," in which form it was presented before the arbitrators, is hereto attached and made a part of this affidavit.

(96) This affiant further says that by the unanimous direction of all the arbitrators he was instructed not to reprint in the minutes any of the exhibits which were already in print in brief for the Republic of Colombia, and that through inadvertence and mistake this document was not printed in said brief, but was omitted therefrom, and also from the report of the proceedings.

Affiant further says that a large number of papers offered before the arbitrators, but reference to all of which appear in the report of proceedings, are not printed in the proceedings, because by the unanimous direction of all three said arbitrators this affiant was instructed not to have them printed. That the said Act of Congress of the Republic of Colombia is the only paper not printed which this affiant was not instructed by the unanimous direction of all three of said arbitrators not to print in the report of the proceedings.

The said Law 41 of 1896 is printed in the first column of page 1122 of the said "Diario Official" of November 23d, 1896, hereto attached.

HAROLD R. MILLER.

Sworn to before me by Harold R. Miller, the affiant who is known to me, at the city of New York this sixth day of December, A. D., 1897 (the words "in which form it was presented before the Arbitrators," interlined in the first page before Execution").

ANTONIO C. GONZALES,
[Notarial Seal.] Notary Public, New York County.

[N. B.—The "Diario Official" is annexed to the original affidavit on file, and the Spanish text of the law therein published appears in Exhibit No. 11, *supra*.]

Complainant's Exhibit No. 19.

(97) Filed 17 day of Dec. 1897.

L. B. DELLICKER, Clerk C. C. U. S. D. W. Va.

MINUTE BOOK

of the

COLOMBIA–CAUCA COMPANY ARBITRATION COMMISSION,

Created under the Convention of 4th January, 1897.
Inaugurated April 3rd, 1897, in
New York City.

VOL. I.

COMMISSIONERS:

Professor LEWIS M. HAUPT, C. E.
Sr. MANUEL H. PENA, C. E.
MR. CHRISTIAN F. SCHRAMME, Merchant.

CHAIRMAN:

Professor LEWIS M. HAUPT, C. E.

Mr. MARCUS STINE, New York, } Attorney for the Cauca Company.

Mr. FRANCISCO J. CISNEROS, New York, } Attorney for the Republic of Colombia.

RODERICK ROBERTSON, New York. } Counsel for the Republic of Colombia.

SECRETARY:

HAROLD R. MILLER.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

(98) This is the volume referred to in affidavit of Harold R. Miller, attached to Vol. 3 of these minutes, dated New York, Nov. 1, 1897.

(Signed.) EMMET R. OLCOTT, N. P.,
[L. S.] New York City.

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Mr. FRANCISCO J. CISNEROS, New York, } Attorney for the Republic of Colombia.

RODERICK ROBERTSON, New York. } Counsel for the Republic of Colombia.

SECRETARY:

HAROLD R. MILLER.

C. G. Burgoyne, Walker and Centre Streets,
New York.

First Session.

(99) Meeting of the Commission appointed under the Convention of the fourth of January, 1897, by the Government of Colombia on the one hand, and The Cauca Company on the other hand, at 30 Broad Street, New York City.

Election of Chairman—Presentation of Attorneys, Retainers—Preliminary Steps.

Present: Prof. LEWIS M. HAUPT, C. E., Mr. MANUEL H. PENA, Mr. CHRISTIAN F. SCHRAMME.

The Commissioners organize by electing Professor Lewis M. Haupt, chairman.

Thereupon Mr. Francisco J. Cisneros hands in his retainer as representative and attorney of the Colombian

Government, and Mr. Stine in attendance representing the Cauca Company as attorney.

The Chairman submits a notice from the State Department at Washington, dated the 18th day of March, 1897, and executed by John Sherman, Secretary of State, and Julio Rengifo, Charge d'Affaires, *ad interim*, of the Republic of Colombia, showing that these representatives of the two Governments have selected Lewis M. Haupt Umpire, to perform the service and duty which may be required of or devolve upon him by reason of the stipulations contained in the articles of agreement between the Government of Colombia and the Cauca Company, signed January 4, 1897.

The Chairman also submits a translation of the said articles of agreement furnished him by the State Department, and the respective parties agree to examine the same and compare the same with the original and ascertain the correctness of the translation for the purpose of future reference.

The arbitrators, Messrs. Schramme and Pena, state that (100) their respective principals are prepared, whenever called upon, to pay the necessary expenses of the commission, including the salary of the Umpire, Professor Haupt, and such other expenses for stationary, stenography, and so on, as may come up during the progress of their sittings, in conformity with the provision of Article 12 of the Agreement.

Mr. Cisneros kindly offers the services of his stenographer and typewriter, without compensation, to the commission during its sessions, and this offer is accepted by all parties.

The Commission decides to hold its meetings at the office of Mr. Stine for the present, unless it should decide otherwise hereafter.

The Commission calls for translations of the original concession, the extension thereof, the contract of January 13, 1896, Law 41, and the present Agreement of January 4, 1897, approved by Mr. Cisneros as to the correctness of the translation, which Mr. Stine, on behalf of the Cauca Company, agrees to furnish.

The Commission furthermore agrees to stand adjourned until April 26th, for the purpose of giving Mr. Stine an opportunity of presenting his opening, setting forth the claims of the Cauca Company against the Colombian Government, with the understanding, approved by the Commissioners, that, if this time should be insufficient, that said time shall be extended for a short reasonable period; and if, on the other hand, this length of time be not required, that he

shall so notify the chairman, who shall thereupon call an earlier meeting of the Commission.

On motion, duly seconded, the meeting adjourns until further call of the Chair.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Second Session.

(101) Monday, 26th April, 1897, at 11 A. M., at 30 Broad street.

Appointment of Secretary—Discussion on Scope of Convention—Presentation of the Claim of the Cauca Company.

Present: Professor LEWIS M. HAUPT, C. E., Chairman. Mr. MANUEL H. PENA, Mr. CHRISTIAN F. SCHRAMME, Chmmissioners. Mr. F. J. CISNEROS, att'y in fact for the Gov't; Mr. MARCUS STINE, att'y for the Cauca Co.

The minutes of the last meeting of April 3rd, 1897, were read, approved and signed.

Mr. Stine having moved that permanent secretarial service be obtained, Mr. H. R. Miller was, at the suggestion of Mr. Cisneros, appointed Secretary to the Commission.

The chairman placed on record the translation of the Convention of 4th January, 1897, submitted by Mr. Rengifo, Charge d'Affairs *ad interim*, on behalf of the Government, and stated that, inasmuch as a difference of opinion had arisen as to the meaning of the words "*trabajos y obras*," it would perhaps be better to consider the question first, in order to know just what the Commission was to act upon.

Mr. Stine, on behalf of the Cauca Company, objected to the translation as incorrect, in the first place, because it was philologically incorrect, and, secondly, because it did not express the intention of the parties to the agreement. In order to determine the first objection as to the philological incorrectness, Mr. Stine stated that he was

prepared to furnish the testimony of lawyers who are con-
(102) versant with the technical terms employed in these documents, and are thoroughly familiar with the Spanish and English languanges, and, in the next place, he would prove, on the highest authority available, what was the intention of the parties to the agreement; that Mr. Schramme and the President of Colombia negotiated the agreement, and several drafts were submitted for approval and rejected by Mr. Schramme on account of the limited scope of the indemnity, and there was present at such negotiations the United States Minister at Bogota, Mr. Luther McKinney, when the question of the said indemnity had been fully gone into, and the word "*trabajos*" had been put in after being fully debated, it being fully understood that the President wishes this Commission to take into consideration the actual amounts expended under all heads. Mr. Stine expressed his intention of examining Mr. Schramme on this point, as the law allowed him to do so. He was also prepared to furnish expert testimony as to the real meaning of the word "*trabajos*" in connection with the whole of this contract, and he further added that he deemed it a matter of the greatest importance to his company that this question of the real meaning of the contract be settled before the Commission proceeded with its labors. He was fully prepared to open his argument for the Cauca Company, and to present a detailed statement of the claim, duly authenticated by vouchers, but he was not prepared to do this until the point in question had been settled; therefore, unless the Commission should be able to come to some understanding in this matter, he must ask the chairman to adjourn the meeting for that purpose.

Mr. Cisneros, on behalf of the Colombian Govern-
ment, stated that he could not agree to the meaning of the word "*trabajos y obras*," as interpreted by the Cauca
(103) Company. He had attended several conferences in Bogota with the Minister of Finances, Mr. Cherry and Mr. Schramme having been present at one of them. Having been consulted in the matter from the first, he (Mr. Cisneros) was fully cognizant of the views of the Government on this point, and he was prepared to bring before the Commission the testimony of engineers fully conversant with both languages and accustomed to the use of these technical words in both languages, and, besides that, he would show from the former agreements of Mr. Cherry with the Government how the word "*obras*" was to be construed, and that he could not accept the broad meaning which the Cauca Company put thereon. Mr.

Cisneros, continuing, said that as he understood it, Mr. Stine wished the Commission to accept expenses, not on the actual work, but outside the work; the words in that case would be made to convey the idea that all organization, traveling, and other expenses incurred in the States would be covered, whereas this was not the meaning of said words, nor was it the meaning intended to be conveyed by the Convention as he understood it.

Mr. Stine wished to know whether administration expenses were not to be considered as part of the cost of the work done, and Mr. Cisneros expressed it as his opinion that administration expenses incurred there (at Buenaventura) would be admissible, but not those incurred here.

Mr. Stine declared that it was an utter impossibility to draw the line between administration expenses incurred here and those incurred in Colombia. He understood that if the Colombian Government called in an American Company to do the work of construction, it was a sanction *per se* of the incurring of administration expenses in this country.

Mr. Cisneros stated that as regards the companies he had organized in London to take charge of construction work in Colombia, the London expenses had never been charged to the works. The fact that the Convention set forth that the Commission shall go down and inspect the works on the spot showed clearly that only work actually done was under consideration.

After some discussion on the subject, Mr Stine drew attention to the fact that there were two conventions, one a preliminary one. In the preliminary agreement it was stated that the Commission might go to Cauca and exam-
(104) ine the work if they so desired.

Mr. Pena and Mr. Cisneros stated that they only knew of one Convention—the one of 4th January, 1897—which was the one they had to work by, and they were not authorized to depart from the same.

Mr. Schramme stated that the said preliminary Convention was a legal document properly signed, in their possession, and Mr. Stine added that the Cauca Company would be pleased to furnish a copy to Mr. Cisneros if the Colombian Government had failed to provide him with all necessary documents.

Mr. Stine said: "We are trying to get at the intention of the high contracting parties with regard to the preliminary agreement, which was the basis of the subsequent one, and it says there plainly and distinctly that

the Commission might, if it deemed it necessary go to Cauca."

Mr. Cisneros proceeded to inform the Commission of the President's views as expressed to him personally in the matter. Mr. Stine objected to these statements on the ground that only legal evidence was admissible, and that private conferences between the President and Mr. Cisneros were not admissible,

Mr. Schramme stated that Mr. Cisneros' negotiations with the Government in the matter of the arbitration were entirely broken off, as Mr. Schramme, on behalf of the Cauca Company, peremptorily refused to accept Mr. Cisneros' proposal that three engineers should be appointed as arbitrators to examine the work. The negotiations were resumed between the President and himself, and the present agreement was entered into and signed.

The question of the journey to Cauca was then discussed, the representative for the Cauca Company stating that there was no objection on their part to the journey, if the Commission deemed it necessary. The chairman postponed the subject for future consideration.

Mr. Stine courted the fullest investigation into the affairs of the company, and insisted that his client (105) should receive an indemnity for all legitimate expenses connected with the carrying on of a great work; that the expenses of organization and all reasonable charges be taken into consideration. He stated that the very fact of this Commission being appointed showed that there were other things to consider beyond the mere physical work, which could easily have been examined on the spot.

Mr. Cisneros said that the Government having appointed Mr. Pena and himself to represent the Government in this case, both being engineers, showed that they considered the matter one for a practical valuation of work done.

The chairman stated that the fact of his being an engineer would enable him to decide many matters that might come up in the course of the proceedings, but the Convention of 4th January, 1897, stated nothing as to the necessity of the arbitrators being engineers. He realized that his ignorance of the technicalities of the Spanish language might be a drawback, but took it that the Commission was to abide by the terms of the Convention and make it the basis of their meetings. He then asked Mr. Stine if he were to draw such a Convention, whether he would not have included a phrase to cover the expenses of Administration.

Mr. Stine answered that the Convention was not sub-

mitted to inspection until after it was signed, and then the question of the meaning of some of the words came up. The word "*trabajos*" in the contract must be considered as embodying all legitimate expenses of carrying on the work. The very same discussion came up in Colombia, and some clauses were rejected on this ground; and in the presence of Mr. McKinney, the United States Minister at Bogota, the President stated that it was the intention of the Government to pay all legitimate expenses incurred.

The Chairman remarked that the expression "carrying on the work" was itself ambiguous.

Mr. Stine said that by carrying on the work he meant all expenses legitimately connected with the work. The (106 first translation sent by the State Department uses the word "operations."

The chairman said that here was a railway upon which certain work had been done prior to the advent of the Cauca Company. The company has added to that, to what extent we do not now know. Since then the line has reverted to the Government, and they agree to indemnify the company for the expenses it was put to. We are to determine from the phraseology of the convention what items belong to the indemnity, and concerning which outside testimony is required,

Mr. Stine declared that it was of the greatest importance for his client that the Commission consider the correct interpretation to be given to the convention, and he would ask for ample time to convince them—first, by reading the contract; secondly, by expert testimony of engineers and lawyers, and, thirdly by the testimony of Mr. Schramme and Mr. McKinney, the United States Minister in Colombia. While he was quite ready to make an opening, unless this question can be agreed, he was reluctant to proceed.

The chairman suggested that if Mr. Stine could give the Commission an idea of the difference between the cost of the executive and of the physical work, they would then know what the company claimed.

Mr. Cisneros approved of this plan, and stated that the Government of Colombia do not wish to do anything unfair. "I move that the claim be introduced."

Mr. Stine did not think that they were likely to agree as to the amount claimed. The company had made a claim of $900,000, and Mr. Cisneros had valued the work done at $150,000. The Government had paid them $200,000 on account of the said work. Where there was such a wide difference of opinions, it was not likely that they should

agree. The Government of Colombia then confiscated their property without notice.

Mr. Cisneros said that was the only wrong action of the Government.

Mr. Stine proceeded to say that the Government had also taken away the right of extension, the preferential (107) right, the right to the mineral wealth, and then told them "you have to do what we want." It was only after energetic interference by the United States Minister at Bogota that the Government had consensed to make this contract.

Mr. Cisneros asked Mr. Stine if he proposed to include in his claim any damages the company might have sustained. Both Mr. Stine and Mr. Schramme stated that this was not their intention. Mr. Stine then said that he was willing to introduce his claim with the proviso that the Commission, by a majority of votes, shall come to a conclusion as to what items can be considered in evidence and that then he should be permitted to introduce evidence as to the intention of the contracting parties and as philological meaning of the convention. He introduced the claim subject to this proviso.

Mr. Cisneros said he understood that the Cauca Company would present their claim and the Commission would go through the items and decide on them.

MR. STINE: All decisions to be by a majority vote. Mr. Cisneros agreed to this on behalf of the Government, and it was resolved that all differences of opinion be settled by a majority vote, and that such decision shall be final.

Mr. Stine then said that in the course of this prodeeding it might be necessary to introduce certain remarks which he hoped would not be taken as personal by the representatives of the Colombian Government. Mr. Cisneros thanked Mr. Stine and expressed himself in a similar manner as regards Mr. Pena and himself.

Mr. Stine then proceeded to read his opening address, being a presentation of the claim of the Cauca Company whereby they claimed $962,438.74:

"In coming before your honorable body I deem it my duty to preface my remarks and the claim I have the honor to present to you on behalf of the Cauca Company with a short history of the question at issue from its inception:

(108) "The Concession—or, as it is called, Contract No. 20—was obtained by Mr. James L. Cherry during the year 1890 at a heavy expense, both for moneys actually expended by him for his personel expenses during the nine

months' stay at Colombia, as well as for compensation given for work and services rendered by parties who were employed by him; upon his return to New York a company of highly influential and financially strong persons sons was then formed, during the latter part of the year 1890, to whom this Concession was transferred by Mr. Cherry for a just and equitable consideration. This company deposited with Mess. Camacho, Roldan & Van Sickel, agents of the Colombian Government, the $50,000 gold required under said Concession, but upon the distinct and clear understanding that the Colombian Government would faithfully fulfill its part as agreed to under said Concession. In order to push work and commence operations $250,000 were at once paid in, and work was commenced in earnest upon a liberal scale on January 1st, 1891. Work progressed rapidly, add to the satisfaction of every one, as can be shown by competent witnesses, by the public press, and the 'Diario Official,' of Colombia, during the year 1891, though the company was seriously embarrassed by the lack of labor and frequent disturbances among those employed, notwithstanding the herculean efforts and large expenses incurred by the company to bring more laborers from the interior. During this year tha first breach of faith on the part of the Colombian Government occurred, inasmuch as the latter had agreed, in accordance with Art. 27 of the Concession, to furnish us with mititary protection, but when asked to do so did not comply with our repeated requests. Our company, having complied on the 18th day of July, 1891, with the conditions of Article 25 of the Concession, the return of the deposit of $50,000 gold became due and the repayment thereof as per Articles 25 and 26 was duly requested by proper notification to the Colombian Government. On August 18th, 1891, the re-
(109) payment of this deposit was decreed by the Minister of Fomento; but, notwithstanding our repeated requests for payment, the Government only paid us on the 2d of April, 1892, not in kind as deposited by us, viz.: gold, but in *libranzas* or orders on the custom houses of the Pacific, admissible for the payment of custom house dues to the extent of fifty per cent. This arrangement was only brought about by a personal visit to Bogota of Mr. C. F Schramme at great expense and loss of time, and he was forced to accept the only available way of payment, inasmuch as the Colombian Government had disposed of the original deposit for its own use and benefit. He did this, however, upon the distinct condition that thereafter all interest obligations arising from the contract should be liquidated promptly, and every six months, instead of every twelve months, as

agreed upon in said contract—to which the Council of Ministers, presided over by his Excellency the Vice-President, unanimously consented in the presence of said Schramme and the attorney of the Cauca Company, Mr. Victor Mallarino. Contrary to the stipulations set forth in the abovementioned *libranzas* or orders on the custom houses, that they should be taken in payment of duties to the extent of fifty per cent., they were not directly accepted by the collectors of the custom houses, so that we were obliged to sell them to the merchants having to pay duties, at a heavy discount from their face value; and these *libranzas* were not fully redeemed until November, 1893, or after a delay of two years and four months from the time the repayment of the deposit became due. In discounts on said *libranzas* we lost $3,901.77 Col. This establishes clearly the second vital breach of the solemn obligations incurred by the Colombian Government under the contract.

"We continued, nevertheless, pushing the construction of the railroad to the full extent that the supply of laborers would permit us; and during 1892 we established all over the country labor agencies at great expense to our Company, paying heavy salaries to agents and bonuses to laborers in the shape of advances. Some of the agents (110) brought together a considerable number of laborers and started them on the road to the seat of operations; but in many instances our men were arrested by local authorities on the ground that they were considered revolutionists, and had to return to their homes. A great many deserted during the journey, and in many instances the authorities refused to enforce the contract made with them when called upon to do so. All these efforts have cost the company considerable sums of money. Prior to this, seeing that laborers could not be procured to the extent desired in the country, we brought 250 laborers from Jamaica at a cost of at least $35 gold per head; but, owing to the default on the part of the government in furnishing us with the necessary military protection, as per Article 27 of the contract, these laborers, upon arrival at the seat of operations, deserted to the interior.

"Mr. Schramme, who was at the time in Cali, had a large number of them arrested there and demanded their return to Buenaventura and the enforcement of the contract made between the company and these laborers. The authorities refused to enforce the contract upon the ground that, in accordance with the Colombian Constitution, the courts could not compel a man to work, and that they therefore could only hold these men in prison at our expense until the advances had been repaid or a bond for the

repayment would be furnished, a decision which, it is obvious, left Mr. Schamme no no other choice than to abandon the prosecution.

"Notwithstanding all those serious drawbacks, the company never employed during these two years less than 300 to 400 workmen outside of the officers, engineers, foremen, etc.

"The first payment of interest became due and was audited on January 1st, 1892; but, while the correctness of our bill was acknowledged, payment for same was not made before November 26, 1893, in *libranzas*, showing a delay of about 23 months.

"The second payment became due and was audited July 1st, 1892, which was also paid in *libranzas* on November (111) 26, 1893, or after a default of 17 months on the part of the Colombian Government.

"The third account was due and audited January 1st, 1893, but it was also paid in *libranzas* on November 26, 1893, a default of about 11 months.

"The fourth account of interest became due and was audited July 1st, 1893, but only on November 26, 1893, *libranzas* were issued in payment of same, a default of 5 months.

"The *libranzas* issued for all the above accounts, amounting to $47,962.07 gold, were issued at 156% P., making a total of $122,782.50 Col. money. They were refused direct payment at the Custom Houses of the Pacific from the 50% of their receipts pledged for the payment of said *libranzas* by Article 7 and 10 of the contract, and we were therefore compelled to sell the same to merchants at an enormous discount. These *libanzas* were not fully redeemed until April, 1895, making an additional delay of about 16 months in the final liquidation of the amounts, or a total default of 3 years and 3 months. Exchange rates had risen in the meantime from 150% P. to 195% P., consequently our losses in the above transactions were as follows:

"Discounts allowed merchants..... $ 6,627 05
"Loss in exchange, estimated..... $34,253 05

"The fifth account of interest under the contract was due and audited January 1st, 1894; draft upon the Custom Houses was issued September 20, 1894, a default of 8 months and 20 days.

"The sixth account of interest was due and audited July 1st, 1894, and draft on Custom House was issued for same September 20th, 1894, a default of 2 months and 20 days.

"The drafts issued for the last due accounts, viz., $108,877.50 Col. money, were not fully paid until August, 1895, causing a further default of 10 months in the final liquidation, or a total default of about 18 months The above amount was issued at exchange rate of 176%, but before its total conversion the rate had risen to 200% P., causing (112) an estimated loss to us of about $18,915.05 in exchange, and a loss in discounts of $4,761.05.

"The seventh payment of interest became due, and was audited January 1st, 1895, and drafts upon the Custom Houses were issued for the the same on October 22nd, 1895,—viz., $48,120.86 Col. money—a default of nearly 10 months, whilst its final liquidation was completed about March 1st, 1896, or a total of 14 months.

"The eighth payment of interest became due, and was audited July 1st, 1895, but payment was only made under contract (Exh. No. 1) January 23rd, 1896—the 28th of January, 1896, a default of about 7 months.

"The ninth payment of interest became due January 1st, 1896, and was paid as the foregoing, on January 28th:

"The drafts for these two last payments—viz.: $77,121 Col. money—on the Pacific Custom Houses, was not finally liquidated until June, 1896. The above amount does not include a balance of about $10,000 due for interest in delay of payments up to January 1st, 1896, which still remains unpaid, although its payment was distinctly agreed to in the agreement of January 23rd, 1896. This latter payment of January 28, 1896, though apparently prompt, was only forced from the Government through our refusal to agree to said contract unless said payment was made.

"The delay in all the above payments demonstrates conclusively the breach of contract on the part of the Colombian Government concerning the hypothecation of the 50 % of the gross Custom House receipts of the Pacific coast, because these, though distinctly pledged for the payment of the interest in accordance with Article 10 of the contract, were, as it is already shown, not so applied, and were used by the Colombian Government for other purposes.

"The interest due July 1st, 1896—viz.: $15,672 Am. gold—and due from July 1st, 1896, to date of delivery of the road to the Government, January 27, 1897, viz.: $18,026.25 Am. gold, still remains unpaid, though proper demands were made for the payment thereof by the Cauca Company.

(113) "In order to demonstrate what the Colombian Government considers the equivalent of gold, it should be known to this Commission that the largest part of the pay-

ments were made in Colombian currency of small denominations, and an important portion in nickel coin of 5 cents and 2½ cents denomination; for instance, a payment of $28,000, made by the Custom Houses of Buenaventura was made approximately as follows:

In nickel (5c. & 2½c. coins)	$ 3,700
In bills of 10 cents	$18,000
" " " 20 "	$ 1,300
" " " $1	$ 4,000
" " " $5 and upwards	$ 1,000

and so in most instances. We have also been compelled to accept considerable sums in bills of the State of Cauca Bank, which are not a legal tender, and are worthless outside the State of Cauca; and they could not be used for the purpose of buying exchange. Were these payments an equivalent of gold, as provided for in the Concession?

"By the above we have given conclusive proof that the Government has been constantly, and is still, in default in its solemn obligations under the Concession. These defaults on the part of the Government, under Articles 4, 5, 7 and 10 of the contract, gave us clear right to suspend the work of construction, of which right we have not taken any advantage whatsoever. Up to the end of 1894 work was pushed as fast as the difficulties arising from the labor question, and the defaults on the part of the Government, above mentioned, would permit, and even after the Colombian Congress in 1894 confiscated our property by Law 61, per Exh. No. 2, construction, though reduced, has constantly been carried on. The defaults of the Government also justly entitled us to an extension of time granted under the concession to finish the first section of the railroad, viz. from Buenaventura to Cali, and the Government, upon our representation of the facts, recognized this right by granting us an extension of two years as per Exh. No. 3, (114) which, however, though valid in law, was swept aside by Congress in its arbitrary decree No. 61 (Exh. 2), instigated by the demands of the Cauca people, who demanded confiscation upon the threat of revolution if Congress failed to so decree. Since the date of this decree of November, 1894, we have virtually been deprived of all our rights, and no financier could have been induced to invest one dollar in the Cauca Railroad. This will be the more obvious, because the credit of the Republic of Colombia is next to *nil*, owing to the fact that the interest on the foreign debt has been defaulted for over 15 years, notwithstanding the comparatively small amount—say not over $400,000 annually—it would have required to satisfy the

same and thereby to re-establish its credit. Furthermore, we were compelled to continue the heavy administration expenses.

"All these facts are undeniable *prima facie* evidence of the flagrant breaches and defaults committed by the Colombian Government. And could a greater wrong be pointed out than the fact that in spite of the lawful extension of two years granted by the executive power, invested with all the necessary authority, expiring October 26th, 1896, Congress arbitrarily set aside this act and confiscated our property in October, 1894? It is generally well known, and can be fully proven, that the arbitrary action of Congress was instigated solely by the people of the Cauca, and especially their leading politicians. Had Congress considered the interest of the nation, it certainly would have paused before acceding to these threats, because the period of our administration had saved the nation some $2,400,000, for during the seven years of our administration the Government collected the 50% of the revenues of the Pacific custom houses, amounting to $2,800,000, which had previously been allotted to the railroad, while it paid us only in the shape of subsidies during that time about $360,000, whereby the nation was clearly benefited to the immense amount of over $2,400,000 Colombian currency.

(115) "During the five years from 1885 to 1890, on the other hand, every cent of the 50% revenue and further sums out of the national treasury were paid into the so-called Construction and Maintenance of the Cauca Railroad.

"The same reasons which forced the rescission of the Cisneros contract prevailed in our case.

"I quote from the report of the Minister of Fomento presented to the Congress of 1888:

"'It appears strange that the enterprize of the Cauca Railroad, which is intended to give life, wealth and prosperity to the Cauca Valley, meets with implacable enemies in the very vicinity of Buenaventura, and there is nothing more certain and censurable than such conduct. The Concesionario (Cisneros), in view of the hostilities with which he has to combat, and owing to the frequent interruptions which have taken place in the payment of the custom house dues destined to the carrying on of this enterprise, has proposed the rescission of the contract as the most adequate means to silence the acclamation of these malcontents, but it is my opinion best to continue the contract.

"'In this case I deem it necessary that whilst this contract is in force the Government should give decided help to the Concessionorio in protecting the national interest in-

volved in said enterprise, examining the works whenever it should be deemed necessary, but furthering and backing the same with the utmost energy as the only means to surround it with the credit and prestige which it requires.

"It must be remembered that, when the contract made with Smith was declared forfeited and the penal bond of $20,000 was made effective and collected, it produced in the U. S. a severe prejudice against enterprises in this country, and in consequence our credit would suffer to that extent in case of a rescission owing to the default in the obligations under the contract, that it would be difficult to find another contractor. It is evident that Mr. Cisneros finds himself compelled to accept the rescission of the con- (116) tract against his wishes on account of the hostility of the very people who would be most benefited by this work, though he was fully recompensed by the Government.'

"This animosity has continued ever since, and has stirred up, by hundreds of lying telegrams, constant newspaper attacks and posters in the streets all over the country, such a feeling throughout the country against us that even right-minded and thinking men have not dared utter a word in our favor. An example thereof is the fact that our representative at Bogota, Don Victor Mallarino, a gentleman of the highest standing and character, expressed his determination to withdraw from the representation of the Cauca Company because his life was threatened. This fact he communicated also to the U. S. Minister, who will testify to it if called upon.

"Immediately after the Act of Confiscation we notified the Colombian Government of our protest against its arbitrary action and denial of justice, and demanded, under Article 37 of the Concession, the formation of a tribunal of arbitration to decide upon the legality of its action, and also made proper remonstrances at Washington before the late Secretary of State, Mr. Gresham (Exh. 4), who, in turn, forwarded same to our Minister at Bogota by wire. But all our remonstrances and frequent repeated requests for a speedy decision remained unanswered until October 25, 1895, when, by telegram, we were summoned to appear in Bogota within 30 days from the 18th of October (date of the telegram) for the purpose of forming the tribunal of arbitration, and were notified that, failing to appear, judgment would be taken by default. It was a physical impossibility to reach Bogota before the first of December. Consequently, after the time set for the hearing, we again invoked the intervention of our Government through Secretary Olney (Exh. 5), who at once, deeming the action

of the Colombian Congress a denial of justice, and therefore an action entitling us to diplomatic interference, in accordance with Article 37 of the con-
(117) tract, demanded from the Colombian Government through our Minister at Bogata the necessary extention of time. This, as a matter of course, was promptly granted. Our company thereupon named Mr. J. L. Cherry its attorney and C. F. Schramme its arbitrator. They proceeded by the first available steamer, November 2, 1895, to Bogata, and arrived there after a quick journey on about December 1, 1895. After notifying the government of their readiness to arbitrate the legality of the "caducation," to their surprise they found in their negotiations with the authorities, as shown by the correspondence, that the Government was not ready to arbitrate, but desired to purchase the franchise and railway by an amicable arrangement. Upon the request of the Government, and especially upon the request of the U. S. Minister, various propositions to that end were submitted by said Cherry and Schramme, but after keeping them in attendance for nearly one month and a half the Government declared it required authority from Congress for further action, and therefore desired them to leave matters in *statu quo* until such authority could be obtained from Congress, which assembled during July, 1896. To this Cherry and Schramme objected unless the following conditions were agreed to:

"1st. The act of caducation should be suspended:

"2nd. Both parties should maintain their rights under the Concession:

"3rd Payment of interest accrued up to January 1st, 1896, and of back interest for delays:

"4th. Payment of $15,000 gold for expenses incurred by each of the company's representatives.

"They insisted that otherwise the arbitration under Article 37 of the Concession should proceed forthwith. These conditions were accepted by the President only after forcible and urgent remonstrances by the U. S. Minister, with the exception of the payment of the expenses incurred by Cherry and Schramme, on the plea that the ac-
(118) knowledgment of such payment would be equal to a pre-judgment of the case at issue, and, our representative agreeing, to waive this point for the time being, the agreement of January 23d, 1896 (Ex. No. 1), was entered into. This agreement has also been violated in that the amount of about $10,000, Colombian currency, due us for

the interest in arrears of payment has not been liquidated up to this day. All these arrangements could have been perfected in one week, but the Colombian Government saw fit to detain Cherry and Schramme in Bogota for nearly three months, and this in view of the peremptory call of the Government for them to appear within thirty days for arbitration.

"In accordance with the agreement of January 23, 1896, Cherry and Schramme returned to Bogota August 2d, 1896, having left New York, July 1st. They found upon their arrival, that the greatest animosty prevailed against the Concesionario and his concession, not only among the natives but also among the foreign element, owing to the vile and untruthful statements which were distributed by all the leading newspapers and papers specially established for that purpose by delegates sent from the Cauca. The question had already been discussed by the House of Representatives in secret sessions, and a bill had been passed ordering the Government to enforce the caducation of the Concession through the Colombian Courts. Cherry and Schramme, in view of the above-mentioned base slanders and abuse demanded at once that a committee of Congress be appointed to take proper testimony and to allow them to refute the falsehoods, as, having agreed with the Government that it should procure from Congress such authority as it deemed expedient, and having furnished the Government with conclusive proof of the falsity of the slanders, they felt it was incompatible with their obligations to the Government to enter into a newspaper controversy. A request was also sent through the American Minister to the Vice-President to stop the publication of the aforesaid baseless slanders uttered by the papers in a semi-official capacity, the falseness of which the Government well (119) knew. But both our requests for the committee to be appointed by Congress, as for the interference of the Government with such publications, were denied, the latter on the ground that the Constitution granted liberty of the press. Meanwhile, the minister in charge of our affairs requested us to submit such propositions for the sale of the railroad to the Colombian Government as we desired to make, always insisting that the Concession and the road *must* revert back to the Government. Against this assumption we energetically protested that we could not be compelled to rescind our Concession and yield up the road except of our own free will, or were forced to do so by the adverse decision of an arbitration to be held in accordance with Article 37 of the Concession, at the same time stating that we would prefer the continuance of the valuable Conces-

sion, which we certainly knew could be the only decision of the arbitration. But taking into consideration the unjustifiable animosity against us throughout the country, the hostile action of Congress, and of the Government, as well as the fact that the people of the Cauca were determined to destroy our property if the Government did not comply with their demand to confiscate it and turn it over to them, and that they had given us tangible proof thereof by setting fire to and burning to the ground our main office and freight building at Buenaventura, with all their valuable contents, causing a lass of over $40,000, and that we had received letters threatening to throw our locomotives into the Dagua River; taking, as we say, all these facts into consideration, we reluctantly arrived at the conclusion that our only course would be to submit to the powerful forces against us in a strange country, where we were without friends. We therefore submitted to the minister a number of propositions for an amicable settlement involving the rescission of our Concession and the transfer of our railroad to the Government. For five long months the minister in charge of these negotiations detained us with arguments and the most unacceptable counter propositions, so that finally we were compelled to demand, (120) through our minister, the formation of the tribunal of arbitration under Article 37 of the Concession. We demanded, too, that matters should remain in *statu quo* until further instructions could be had from our Government, as it was absolute impossible to hold such an arbitration in Bogota, in view of the inflamed state of the public mind.

"Meanwhile the Senate had amended the House Bill so that it authorized the president to enter into an amicable arrangement within thirty days of the date of that Law (Exh. 6), and at the expiration of that time, on the 27th of November, at last the vice-president himself took charge of the negotiations and entered into a preliminary amicable agreement (Exh. 7). This, subsequently on the 4th of January, 1897, after another long lapse of time of more than thirty days, was reduced to an *escritura publica* (Exh. No. 8), under which this honorable body now convenes.

"I have gone into the details surrounding this transaction at great length, as I think it essential that the Commissioners should know the history of this case. I have carefully refrained from animadversions, except where I have called attention to a fact or set of facts which in themselves showed a spirit of unfairness.

"It may be asked with some show of reason why the

Colombian Government should invite foreigners into the country; ask them to build a road, and when they get fairly started, in defiance of the laws which they themselves made, in defiance of the contracts which they themselves entered into, arbitrarily and without reason abrogate those laws and rescind those contracts as was the case when Congress and the Government autocratically passed the law of confiscation already referred to.

"On the surface the Government had some justification for dissatisfaction with the promoters. The promoters had undertaken to build the road from the terminus of the old road to Cali within four years and had failed to do so. No other ground of complaint could be urged, but, as a matter of fact, the Government never once, either in writing or orally, called upon this Company to com-
(121) plete the road within the time limited; never once made any remonstrance to this company, either in writing or orally, threatening that if the road was not completed within the given time they would hold the company guilty of breach of contract; never once sent a commissioner or representative who declared that the company was in any respect in default; but, as a matter of fact, to this day there is no record of any kind claiming that this company has been in default. Even the law 60 of November 16, 1894 (Law of Confiscation), recites in Article 1st nothing more than the fact that Congress refuses to approve the Contract 98 of 1892, which was a refusal to approve of the extension of the four years' contract, two additional years, to October, 1896. It should be borne in mind in this connection, in order to understand the flagrant and high-handed outrage that was committed by the Government of Colombia, that under the original concession, if the Government of Colombia was in default in the payment of any moneys, such as interest moneys, etc., due to the Cauca Company, the term of four years within which the construction had to be completed was suspended, and only commenced to run again after the interest payments had been made, so that at no time had the term limited in the original concession within which the road had to be completed expired.

"The unjustifiable character of the Law of 1894, which may be characterized as a law of spoliation, was tacitly acknowledged by the Government itself when it suspended the operation of this law, allowed the Cauca Company to remain in possession of the road in spite of the law, allowed the Cauca Company to operate the road and to collect the revenue therefrom in spite of the law. It is true that it may put a provision in the act suspending the operation of the law of spoliation; that this forbearance on its part was

not to be pleaded in any arbitration which might thereafter be had; but I do not wish to have the Commission infer anything from the stated remarks which I have made on this subject which would be in contravention of this latter (122) provision, it having been put before you by me solely and only for the purpose of throwing light upon the different steps which were taken in the progress of this case.

"As a matter of fact, what were the grievances of the Cauca Company?

"First.—They were obliged to practically reconstruct the old road which had been turned over to them, so as to make it fit and safe for traffic.

"Next.—Military protection, which under the original concession was guaranteed to them, was absolutely denied when requested.

"Next.—It was made as difficult as possible for them to procure labor, and when they had procured it, their contracts were not enforced by the Government.

"Next.—The Government consistently, and in every instance in which interest was due to them, failed to pay it at the time it was due, often making the company wait for years before paying the installments due, and then paying, instead of in gold or its equivalent, as the contract called for, in depreciated currency, which the company could not use, except at great loss, and when stretched over a long period of time.

"Next.—The Government returns the $50,000 which this company had put up in gold, as an evidence of its good faith, and which have properly been treated by this Government as a mere deposit, after a lapse of more than two years from the time it was due to the company, and then, instead of paying this money, which was the property of the company, in gold or its equivalent, it pays again in depreciated currency, subjecting the company to heavy discounts when used.

"Next.—Without notice, without a demand of any kind, without a claim set forth that the company had been in default, in the most high-handed manner, the Government calmly confiscates by act of its Congress and of its Execu- (123) tive, property which had been duly paid for, which had been improved and extended by the company, very much in the romantic fashion of the highwaymen of the last century who, under polite forms, robs his victim while heaping upon him the most courteous expressions of regard.——

"Next—The people of the Cauca deliberately burned down the buildings belonging to the company; then they threatened to derail the engines and cars which the company might send over the road; then they vilified, traduced and slandered the company's officials and representatives in every newspaper that is published in the Cauca or at the Capital; issued the most scurrilous pamphlets attacking the company and its officials, without a finger being raised or a thing being done by the Government to prevent or stop this course, or to establish the falsity of the charges made by these irresponsible sheets, although it had in its possession and on its records the official reports of the commissioners sent out and appointed by it to examine and pass upon and measure the road as built by this company and turned over by it to the Government, which official reports set forth that the 16½ kilometers were built in accordance with the specifications of the Concession, and were in all respects satisfactory to the Commission.

"The utter falsity of these charges is best shown by the fact that after this arbitration had been decided upon, and after the road had been turned over by this company to the Colombian Government, a Commission appointed by that Government, in which the Cauca Company was in no wise represented, made a report to the Government setting forth in detail an inventory of what had been turned over, and also giving the conclusions of the Commission to the effect that the road was in good condition; that it had been extended 16½ kilometers; that in addition there were seven more kilometers graded, and that great improvements had been made on the line under the administration of the Cauca Company, and a complete survey of three different (124) proposed lines had been delivered over to the Colombian Government by the Cauca Company, at a cost to this company of $50,000 gold.

"It may be asked why it should have taken so long for the Cauca Company to have constructed 16½ kilometers, and it may be inferred that the company was not sufficiently assiduous in the prosecution of its work, considering what it had accomplished in so long a time.

"It is hardly necessary for me to point out to the Commission that, if the labor cannot be obtained; if the *nervus rerum*—the money which was due to the company—instead of being paid regularly and in full, and according to a recognized standard of value, is paid in driblets, at irregular intervals, in depreciated and dishonored tokens, instead of in gold; if, when the company attempts to sell its bonds in the European markets it is met with the threat of the English bondholders' committee, headed by Sir John

Lubbock, that the creditors of Colombia would not allow the bonds of this, or any other Colombian enterprise, to be marketed in Europe until the discredited and dishonored obligations of the Colombian Government, on which there was past due and unpaid interest for 16 years, had been arranged to the satisfaction of the creditors of the country, then, indeed, the sale of the bonds of such a company as the Cauca Company becomes an impossibility; and if, in addition to the facts enumerated, labor troubles, withholding of cash due, withholding of interest moneys, lack of credit of the country itself in which the enterprise is situated, is added the actual confiscation of the enterprise, then the question is answered in that no great, no important, no far-reaching work, such as the building of a railroad, can under these circumstances be completed, and especially in a tropical country, where nature itself wars against man with the greatest fierceness.

"It is a marvel of marvels that, with all the discouragements and all the obstacles that were thrown in the way of the promoters of this enterprises, any part of it should have been finished at any time.

(125) "It is not hard for persons familiar with the building of great works to realize from the state of facts as I have attempted to outline them that what should have been the cost, was greatly increased, at least trebled, by the malevolent acts of a hostile Government.

"It would give no fair notion of the expenditure of money to consider the question in its naked form—to-wit: At what price can I construct 16½ kilometers of road and grade 7 additional kilometers? If a road of this length were to be constructed in the State of Illinois, a flat prarie road, no doubt it would cost very little, as there the rails, the ties and the rolling stock could be procured at first hand, the workmen could be had without trouble, and a full day's work gotten out of them; the laws would do everything in the world to protect the contractor, and not to hamper and annoy him; the people themselves would look upon the enterprise with favor, and would do all that was possible to aid it. Therefore, an ocular inspection of the work that has been done would not give a fair notion of what the just claim of this company really amounts to.

"All the facts and circumstances of the case should be taken into consideration, and when the language of the contracts which were made is carefully considered it will be found that the contracting parties distinctly had in mind the repayment to the Cauca Company, by the decree of this Commission, of the moneys actually expended by it, not the moneys expended by it only for rails and ties, and

rolling stock, and earthworks, but the moneys expended upon the whole enterprise.

"Before the present contract, under which this Commission is sitting, was made, a preliminary contract was agreed upon between the parties, which set forth that the Commission might visit the scene of the operations of the company in Cauca, 'if they deem it necessary,' clearly showing that the parties in interest had in mind not a question of judging simply and only what, under the most favorable circumstances, would be the cost of the extension of the Cauca road, but what, as a matter of fact, (126) under the circumstances as they actually existed during the years 1890 to 1897, were actual *bona fide* outlays of this company.

"Should there be any doubt upon this question as to what the contract under which this Commission was appointed really meant, I will submit the evidence of Mr. McKinney, the United States Minister at Bogota, and of Mr. C. F. Schramme, a member of the Commission, who will testify, if the Commission deems this essential, that several proposed contracts were submitted for ratification which called for repayment to the Cauca Company of the moneys found to be due upon a valuation of the road; that Mr. Cherry and Mr. Schramme and the United States Minister rejected these proposed contracts, insisting that the final agreement should embody a provision calling for the repayment of the expenditures actually incurred, as a mere valuation of the road would never show a very considerable part of the expenses incurred, and which a mere inspection of the road would not reveal.

"This company proposes to submit its claim to this Commission in detail. It proposes to show that its books were carefully and accurately kept; that the entries were made from time to time, as occasion required, in the regular course of business; and vouchers for all payments will be submitted, showing what the payments were for, and, if the Commission requires it, a detailed explanation of every claim.

"Two accounts were kept; one in the New York office, and one in the office of the company at Buenaventura, where the company always had trustworthy men to supervise the accounts, which were audited from time to time by the officers of the company. Unfortunately, the buildings of the company were razed to the ground by a fire of incendiary origin in January, 1896, immediately after the promulgation of the news that the Government had entered into an amicable arrangement of settlement with the Cauca Company, whereby all records, books, vouchers,

papers, money to the extent of $25,000 and valuabe instruments and maps were destroyed.

(127) "We will show that the office at Buenaventura drew on the New York office for funds from time to time as the same were required, and were paid by the New York office. The records and vouchers in Buenaventura, if it had not been for the fire, would show in detail the disbursement of these sums. In the absence of these records, which have been destroyed through no fault of this company's, we will show by competent evidence of persons in the employ of the company how the money was expended at Buenaventura. The claim of this company amounts, with the interest up to date when this Commission met, to $830,188.74, of which this company acknowledges the receipt on account, in conformity with the contract, of $200,000. This sum of $830,188.74 is made up as per Exhibit No. 9.

"Outstanding obligations not included in the above, $132,250.00, represented by bond certificates; making a total of $962,438.74.

"In presenting the books of account, I desire to call the attention of the Commission to the fact that when the original concession was transferred by Mr. Cherry to the Cauca Company, the Cauca Company in turn made a contract for the construction of the road with a construction company which was known as the 'Colombian Construction & Improvement Company,' which latter company owned all the stock of the Cauca Company. The two companies were, therefore, in effect and for the purpose of this inquiry, one and the same entity. The books of the Colombian & Improvement Company will, therefore, be introduced in evidence to show what the actual disbursements of the Cauca Company were.

"Should this Commission be in any doubt on any of the questions which have been touched upon in this opening presentation of the Cauca Company's case, the company is prepared to remove all doubt in relation thereto. It will be an easy matter to show that other lines built in the tropics under far more favorable conditions have cost very much more than this line has cost. It will not be (128) difficult to show that in Colombia itself similar cases have been adjudicated upon under circumstances not dissimilar from the one in question, where the award was even larger than is claimed in this case.

"After all, the Cauca Company, despite its earnest protests, desplte the fact that it was entirely willing to complete and finish this road to Cali, and to build further extensions, even after the Colombian Government had discarded all its rights and had actually had a law passed de-

spoiling it of its property, has been compelled to give up and hand over the existing road to the Government. That it did so was solely because it had no choice, and because it considered a lean promise better than a fat lawsuit.

"If this were a case which could properly be brought before the tribunals which usually assess damages, this company would have a claim for millions of dollars.

"It was deprived of a road 37½ kilometers long, which it was operating at a profit; it had the exclusive right to extend this road for 300 miles, going through one of the richest valleys in the world, which the great Humboldt justly named the 'Italy of America'; it has a preferential right to extend beyond this for hundreds of miles, connecting the largest cities of the Cauca and Antioquia with the Pacific, besides tapping gold and silver mines and the great coal mines of the Andes, being, so far as known, the only important deposit of coal on the Pacific side of South America; and, in addition, it surrendered 24 kilometers of public lands for each mile of road built on each side of the railway, as the same was constructed.

"Had this company been allowed to complete its road and to avail itself of its franchises as granted, without interference, without being harassed, without being deprived of the payments which were its just due, its promoters and and owners would have owned one of the most valuable franchises that was ever granted to any corporation. It would be easy to show that if the Colombian Government had fulfilled its just obligations, capital, as much as might have been needed, (129) would have been readily and easily obtained, and a great monument of the enterprise and thrift and foresight of American genius would have been reared up in the Southern half of the Western Hemisphere. As it is, against our strenuous protest, we have been compelled to agree to accept, in lieu and place of this highly valuable concession, a mere pittance, only the actual money spent, and we may surely ask that from this not a jot or tittle shall be deducted, for, with a full award of the amount claimed, those who had the foresight to project this great enterprise, the boldness to undertake it, the money to build it, whose hopes of a brilliant consummation have been dashed by petty and malevolent hostility, will only be reimbursed for their actual outlays. Confident that a careful and impartial scrutiny of the facts and circumstances of this case will lead to an award of all we claim, we respectfully lay this case before your honorable body.

"(Sig.) MARCUS STINE,

"Attorney & Representative of the Cauca Company."

After the reading of the opening, the chairman said the claim was now before the Commission, and that a certain period should be allowed Mr. Cisneros in order to reply to the claim on behalf of the Government of Colombia, and he presumed that Mr. Stine would furnish all parties with a copy of the claim. This Mr. Stine agreed to do in a few days as soon as they could be prepared.

Mr. Cisneros moved the adoption of the mode of procedure as proposed by Mr. Pena, and after some discussion it was resolved that Mr. Cisneros should be allowed a period of three weeks from the date of receiving a copy of the claim from Mr. Stine in order to prepare his answer, and that the proceedings thereafter be arranged as exigency requires.

It was resolved that all evidence be presented in the true and usual legal form and shall be the only evidence admissible. The chairman then notified the Commission (130) that he would call a further meeting upon hearing from Mr. Cisneros, and on a motion duly seconded the meeting adjourned until a further call from the chair.

(Signed.) LEWIS M. HAUPT,
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER,
Secretary.

Third Session.

(131) Monday 24th May at 11 A. M., held at 30 Broad St.

Reply of the Columbian Government to the Claim—Chairman's Opinion on the scope of the Convention.

Present—Commissioners and Attorneys as before.

The minutes of the last meeting, held April 26th, were read and approved, and ordered to be signed.

Mr. Pena asked the chairman how items in dispute were to be settled by the Commission, and it was resolved that, in the case of disagreement between the members of the Commission, the chairman shall decide the question at issue.

The chairman then said that, in accordance with the procedure decided upon at the last meeting, the Commis-

sion was ready to hear the reply of the Government to the claim of the Cauca Company.

The reply of the Colombian Government, as follows, was then read:

"The Government of Colombia, by Francisco J. Cisneros, its attorney herein, answers the claim of the Cauca Railway Company as follows:

"I. It denies that there is any sum whatever due from it to said company by reason of any matter or thing either embraced within the claim of said company presented before this Commission, or otherwise. On the contrary, said Government avers that it has paid unto said Cauca Company the full amount of any and all sums which in any manner it ever undertook or agreed or ever could in any manner be called upon to pay unto said company, and the full value of and all of the property which it, the said Government, received from said company in and under the set-
(132) tlement, adjustment and transfer upon and out of which this arbitration arose.

"II. Said Government respectfully objects, and will object, to the consideration by the Arbitrators herein of any item of the claims of said company which does not form a portion of the moneys legitimately and properly expended by said company in the actual construction and equipment of the Cauca Railway or in the laying out and survey thereof.

"III. Said Government denies each and every charge of wrong, default and breach of contract or good faith alleged against it by said Cauca Company; and, while fully prepared and able to disprove each and all of said charges, respectfully submits and objects that such charges are wholly foreign and irrelevant to the subject matter submitted to arbitration herein.

"All of which is respectively submitted.

"Dated at New York City the 24th day of May, 1897.

(Signed) F. J. CISNEROS,
Attorney of said Government,"

and it was accepted and placed on file. Mr. Stine thereupon said that he must then object to the books of the Cauca Company or of the Colombian Construction Company being put in for examination, until this question of the decision as to the interpretation of the contract had been decided. The Convention states that the books of said company shall form the basis of these proceedings, and it behooves the Commission to now decide whether the

mere physical work only was to be taken into consideration or whether the books of the company were to be considered also in accordance with the terms of the Convention. In the next place Mr. Stine pointed out that it appeared to be assumed that the Cauca Company would be satisfied with the re-payment of the administration expenses and of the cost of the work done, whereas what they really claimed was the re-payment of the money actually expended by it in the entire conduct of the enterprise. He did not pro- (133) pose to introduce any improper charges, but simply to claim the re-payment of what the company had paid out, as that was distinctly the intention conveyed by the preliminary contract.

The reply of the Goverment to Mr. Stine's letter of the 28th April was taken as read and placed on file.

The chairman then rose and addressed the meeting as follows:

Gentlemen,—It is evident that there had existed a great difference of opinion between the two contending parties, and for that reason it has not been possible hitherto to arrive at a settlement. There is a great responsibility resting on this Commission, which has been created to decide this question without appeal.

Your chairman, realizing this fact, has given careful consideration to the question of the interpretation of the Convention because it is really fundamental, and he now takes the responsibility of submitting a ruling on the interpretation of the "Convention" which is the real basis of negotiation. This opinion has been arrived at after a careful study of the question at issue. It is addressed to my co-Arbitrators, Mr. Pena and Mr. Schramme, and I beg to present it to the Commission, and hope that you will see your way to accept it.

The chairman then read this ruling, as follows:

"New York, May 24th, 1897.

SENORES MANUEL H. PENA, CHRISTIAN F. SCHRAMME,

Co-Arbitration Commissioners:

"Gentlemen,—The Convention of the 4th of January, 1897, was entered into between the Republic of Colombia and the Cauca Company, for the purpose of terminating amicably the concession secured by said company through their attorney, James L. Cherry.

"By this contract it was mutually understood and agreed that the company should surrender all its rights, title and interest in and to said railroad, with its conces-

sions and franchises, and should receive in consideration therefor a "just and only indemnity" without appeal, on account of which, and as a partial consideration for the (134) surrender of the premises, the Government has already paid the sum of $200,000 in gold, subject to such further sum as might be found justly due under the above agreement.

"In the effort to determine the amount of the balance a disagreement has arisen as to the real intent and scope of the Convention as expressed in the written agreement; it being contended on the one hand that the words "*trabajos y obras*," as found in Article 3, should be limited to the mere physical work of construction, equipment and local administration, and on the other, that they were designed to include all legitimate expenses connected with the enterprise. As a proper construction of the terms of this contract is fundamental for its judicial application, your chairman has given it much careful consideration to the end that he may determine the true intent and spirit of the agreement in the language of the place where and when it was framed. To this end he has not only carefully analyzed the original document, but has sought and obtained the opinions of disinterested and competent experts familiar with the use of the terms and their applications to such works. These opinions are appended hereto in Exhibit "A" (C. C. C.). He has also reviewed the history of the concession and of the previous works and their relations to the Government, to determine their bearings on the question at issue, and has given due weight to the equities which must form the only permanent and satisfactory basis of arbitration between contending interests, to-wit: "In all things, whatsoever ye would that man should do to you, do ye even so to them."

"On this basis your chairman believes, and therefore submits, that the spirit and intent of this agreement should not be limited to the strict technical construction of the words "*trabajos y obras*," since their meaning is modified by the verb "*Costear*" (to pay expenses), as well as by that of the term "*indemnizacion;*" but that the Cauca Company should be awarded a sum of money sufficient to compensate them for all legitimate and necessary expenses in- (135) curred in the prosecution of the work; such payment to be made, not as liquidated damages for any liability on the part of either of the high contracting parties, but as full satisfaction for moneys actually invested, the benefits of which must hereafter accrue solely to the Republic of Colombia.

"In determining what items are ligitimate and neces-

sary, the commission should admit only those of which the company have submitted or may submit the proper vouchers or other legal evidence as to their having been paid in cash or its equivalent, or for legal obligations incurred, and which may not yet have been satisfied, but not for mere paper bonuses or commissions, the value of which was prospective, not for hypothetical losses. Due credits should be given also for all revenues derived from the use of the property during the ownership and control of same by the Cauca Company, so that said company shall have suffered no financial loss, but be completely and fully indemnified for its efforts to carry out the items of its contract under adverse circumstances beyond the control of either party, while the Government will have preserved its credit and be placed in position to prosecute the work in future to its great advantage and for the welfare of the country.

"The amount of the balance, whatever it may be, is of small import as compared with the establishment of a general principle which shall make it possible to grant such concessions hereafter, on reasonable terms, and secure to all parties an amicable and speedy arbitration of their differences, should any arise.

"Your chairman believes this to be the only fair and just indemnity that can be offered, and that it was the intent of both parties to deal in this equitable manner, and he therefore respectfully recommends and requests his colleagues to acquiesce in this conviction, and to enter their approval accordingly.

"Respectfully submitted,

"LEWIS M. HAUPT."

(136) Mr. Schramme stated that he would accept the above ruling on behalf of the Cauca Company.

Mr. Cisneros moved that the meeting adjourn for the purpose of giving Mr. Pena time to study the chairman's ruling, and, the attorney of the Cauca Company acquiescing therein, it was agreed to adjourn the meeting until Thursday, the 27th inst., at 12 noon, for the purpose of considering the chairman's ruling on the interpretation of the convention, and to commence the examination of the claim of the Cauca Company in detail.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD. R. MILLER, Secretary.

Fourth Session.

Held Tuesday, June 1, 1897, at 12 M., at same place.

(137) Amendment of Chairman's Opinion.

Present: Commissioners and Attorneys as before; Mr. RODERICK ROBERTSON was in attendance as Counsel for the Colombian Government.

The minutes of the last meeting of the Commission, held the 24th day of May, were read, and Mr. Pena wished it placed on record in the said minutes that he had objected to the paragraph contained in the address of the Cauca Company at page 15, wherein it is stated that "the Government, very much in the romantic fashion of the highwayman of last century," etc., and that the said simile had been withdrawn by the attorney for the Cauca Co. The chairman instructed the secretary to amend the minutes accordingly, and as amended the minutes were approved and ordered to be signed.

The chairman then invited the commission to discuss his opinion, stating that he wished both parties to enter into the same with the purpose of reaching a mutual understanding, and that, if there still existed any misunderstanding, he would be glad to hear the arguments of both sides on the subject, as it was time the commission should reach a definite conclusion on this fundamental matter.

Mr. Pena called the attention of the commission to the paragraph in Mr. Haupt's opinion commencing:

"In determining what items are legitimate and necessary, the commission should admit only those of which the company have submitted or may submit the proper vouchers or other legal evidence as to their having been paid in cash
(138) or its equivalent, or for legal obligations incurred, and which may not yet have been satisfied, but not for mere paper bonuses or commissions, the value of which was prospective, nor for hypothetical losses. Due credits should be given also for all revenues derived from the use of the property during the ownership and control of same by the Cauca Company, so that said company shall have suffered no financial loss, but be completely and fully indemnified for its efforts to carry out the items of its contract under adverse circumstances beyond the control of either party, while the Government will have preserved its credit and be placed in position to prosecute the work in future to its great advantage and for the welfare of the country."

He accepted the opinion up to that paragraph, but did

not wish to take the responsibility for this, and Mr. Pena was of the opinion that no losses of any kind sustained by the company should come under the consideration of the commission, and he moved that a paragraph be added to

the effect that no items of the claim be considered that do not appertain to the actual construction of the road.

CHAIRMAN: The opinion is now before you, and I shall be glad to hear the arguments on the subject. Mr. Pena states that the Government intended only to include what was spent on the work of construction; this has been the contention from the first, and leaves us just where we started. I shall be glad to hear from both sides in order to ascertain if the parties may not be brought into substantial agreement.

Mr. SCHRAMME: As I conducted all the negotiations at Bogota, it may probably be a help to the commission if I explain what took place there. The negotiations were conducted with the proper Minister of Hacienda at Bogota; we had any number of meetings, none of which led to anything. The Government made several proposals, all of which led to one point, viz.: to rescind the contract. Of course, we knew at the time that the Government was anxious to rescind the concession in order to give back the road to the Cauca people, and so pacify them inas-
(139) much as great hostility had been shown through newspapers, letters, etc., stating that we had built no road; that nothing had been done, and that we were robbing the country. For this reason the Minister asked us to make a proposition to the effect of such rescission. We made various proposals, one for instance, to rescind the contract by the payment of $38,000 per kilometer, the interest thereon and a compensation for the reconstruction of the road from Buenaventura to San Jose, and furthermore for the seven kil. not completed. The other was to take our books and pay us every expense and 25% for the work done. Then we agreed to finish the road provided the Government would furnish a guarantee for the payment of its obligations as to interest, etc., extension of time, and that we should enjoy protection from riots and so forth. All these offers led to nothing tangible. The Government's proposals were such that nothing definite could be agreed to. Furthermore the proposal was made that three engineers, one by the Government, one by the Company and a third by the other two (this was the suggestion of Mr. Cisneros), be appointed in order to value the work, and this was peremptorily refused by me as inadmissible, because three

engineers could never tell what money had been expended outside of the work, as this no man can value. This was refused and all other proposals were rejected by the Minister. Then we insisted on arbitration in accordance with Art. 37 of the contract, and the Government acceded to this, going so far as to appoint as arbitrator Mr. Anibal Galindo and myself on the part of the company. This arbitration never met because the agreement was never signed and completed, inasmuch as the Art. 37 did not stipulate whether the arbitration was to be held in New York or Bogota. We then asked for the intervention of the United States Minister at Bogota in order to demand our right that the arbitration might be held in Europe or elsewhere. Mr. McKinney thereupon intimated to the Government that inasmuch as our road had been confiscated and that justice had been denied without rhyme or (140) reason on the ground that we had built no road, notwithstanding the fact that, although we had repeatedly asked that engineers might be sent down to inspect the road, none were ever sent, that the arbitrations should be held abroad and that both parties should enter into such an agreement. Further, that if the Government declined to do this he would refer the matter back to Washington for further instructions. After that we still received proposals from the Government for an amicable settlement. Mr. Cisneros was present when the Minister of Hacienda again suggested the valuation by engineers, and I positively objected. At a subsequent meeting we were insulted by the Minister of Hacienda, who told us that we did not want arbitration, but that we wanted to procrastinate and to rob the country. I subsequently made my complaint to the President of Colombia, as we were to leave Colombia and all negotiations would be at an end. The President sent for me, and I must say that when I met Senor M. A. Caro I met the most honorable and polite gentleman that it has ever been my privilege to meet. Mr. Caro told me that he desired to settle the matter amicably; the Government desired the road to be handed over; both parties had been in default during the concession, and the best plan would be to repay the Company every penny they had spent, and the Government to keep the railway.

The difficulty arose that the law passed by Congress was to the effect that the road was to be delivered over at once, which could not be until the amount of indemnity had been ascertained and paid over. The President thereupon asked me to help him out on this point. I told him I would do all in my power and meet him in the same spirit, and I gave him the option of acceding to the payment of

two hundred thousand dollars, the balance to be ascertained hereafter, and we would deliver over the road at once. This was agreed upon, and the draft agreement was prepared between Mr. Caro and myself. He said we did not want any lawyers, "what we want is to examine the books and ascertain the amount." I wanted a word inserted that (141) would cover all that we had expended, and for that purpose the word *costear* was inserted in the draft, as that was the word he wanted. I consulted Mr. Gutierrez Escobar and Mr. Victor Mallarino, and they agreed that "*costear las obras*" meant to pay all they have expended. Mr. Cisneros himself must bear witness that the examination by engineers as suggested was peremptorily refused by me.

Mr. PENA: You may go into financial transactions of any nature, but these have nothtng to do with the indemnity under consideration.

Mr. CISNEROS: We have not objected to the word "*costear*," although I could bring any quantity of dictionaries here to prove that the word does not mean what you assume. This is not the time to go into that, although I may say that we will disprove that later. The point is that we are bringing items into consideration that are not in the convention when we accept the paragraph referred to above. (In determining the items * * *) We have nothing to do with this under the convention, and I should like to say a few words further on the subject. It is not that you have to prove that the money has been spent by you by means of the presentation of vouchers, etc.; what you have to prove to us is that the money has been actually put into the construction of the railway. That is what the conventions says, and we cannot depart a single line from it. This is the point of the discussion, and there is nothing against it in anything you have just said. The result of all your arguments, etc., with His Excellency the President, are embodied in the convention. In that convention you will see the point referred to a great many times as "what has been spent on the work:" valuation of the work done on the spot, and so forth.

Mr. Schramme said, with regard to the words "shall inspect on the spot," that the phrase was only introduced because the people had been so incensed by the hostile statements that there was no railway at all that he wanted the inspection made for the vindication of the company; at his suggestion they had put in the words "*si lo creen* (142) *necesario*." The vindication had been made because in the inventory of the road it is stated that it was delivered in good condition up to San Jose, and that the general state of the road had improved under the Com-

pany's management. He had told the President that the trip was not necessary because the expenditure could be ascertained from the books.

Mr. STINE: I do not want to enter into an argument on the meaning of the contract; I wish to call up a few points which bear on deciding the meaning thereof. My friend on the other side has stated that the convention is a law which binds us absolutely. In that case we have to abide by the natural rules under which the construction and interpretation of laws are governed. In the discussion of Constitutional Law, in case of ambiguity, it is an invariable practice not only to go back to the actual law as it has been finally formulated, but to go back into the papers which led into it, find out the discussion which led into the putting into definite form the conclusion arrived at. It is the invariable practice to read the debates in the legislative places—in Congress, Assemblage, Conferences, etc.—and to see exactly what was said and what led up to the amendment or change; in other words, we should do here as we do in all other matters—viz., to get at the intention—because by consulting dictionaries we may get at the dictionary meaning, but not at the actual intention of the parties. All evidence on such a point is admissible which may throw light on the meaning; nothing that 555 experts might have to say on the meaning of the words "*trabajos*" and "*obras*" by themselves bears on the matter. As the Chairman wisely says, it must be shown that there was a mutual agreement; that is, that the parties agreed to the same thing in the same sense and to apply the words in a particular or technical sense, we must get at the usual meaning of the words. For this purpose the Chairman has called in such experts. In the next place we must try to reconcile the meaning of the word "*costear*" in the ordinary meaning, with the special technical meaning. It is of the highest possi-
(143) ble importance to get at the conversations and events which took place prior to the actual making of the Convention, and to the Preliminary Convention on which this contract was based, and which is actually referred to in the final Convention; there can be nothing more important than to show the intention of the parties. We can take it that there was to be an amicable and just agreement between the parties. One of the parties here rejected repeatedly the Government proposals. It is clearly important that the chairman and the gentlemen of the Commission should know the meaning of the technical words that express the ideas of the contracting parties, and then, as the chairman properly states, take the equities of the case into consideration, and, in doing this, is it reasonable to

suppose that anybody who had been deprived of 20 miles of railroad, which had been handed to him built at a cost of over $1,500,000, and which had since been extended at a cost of $900,000, as per our claim put in, would it, I say, be reasonable to suppose that any such person would be willing to accept $150,000?

Mr. CISNEROS: In addition to what you had received before.

Mr. STINE: At that time we had received nothing.

Mr. CISNEROS: My information from the Government is to the contrary.

Mr. STINE: This is not within the discussion. We are trying to interpret what they thought in the light of what they said, and everything that bears on that is extremely important.

Mr. CISNEROS: Even if we take the basis into consideration, which we have not, the words employed in the basis are the same as employed in the Convention, excepting that you have translated the words "*trabajos y obras*" as "enterprise," which is in no way the meaning of them.

Mr. STINE: That is the meaning.

The Chairman called attention to the point under discussion and desired the argument to be confined to it.

Mr. STINE: I do not wish to add anything to my argu-
(144) ment except that every man has a right to classify his accounts as he chooses, and that the moment that he admits that anything outside the mere cost of construction is to be allowed, from that moment his entire case is done away with. No man can draw the line as to what expenses outside the mere physical work are to be allowed and what are not to be allowed. If you allow payment for engineers' salaries, you must allow also the payment for the salaries of clerks, lawyers, and so forth. Everything that was put into this enterprise that was legitimate and honest, in order to push it to its end, should be repaid.

Mr. ROBERTSON: Mr. Cisneros has said a great deal that I think very important on the question, and I would like to add a few words thereto. I have listened with a great deal of interest to what Mr. Schramme has said about matters prior to this agreement. But I have not been able to move from my position; it is universally acknowledged that in order to get at the meaning of the contracting parties, you must look into the final document as signed, the outcome of the negotiations. In most negotiations men's ideas vary; in confining ourselves to a writing we avoid all that controversy, and we show what, after long discussions

and negotiations, has finally been arrived at. I have no desire to wrest the meaning of the contract from anything the Government may have said. After crediting Mr. Schramme with everything he has just told us, we must remember that he is a gentleman deeply interested for himself and for his Company in the question at issue, and he is now one of this Commission, the tribunal composed by the law of this Convention, and it cannot be otherwise than that he holds a difficult position, and he cannot dispossess himself of that position. I think this Commission should cast aside all the preliminaries of this Convention and look into the paper itself in order to find its meaning. This Commission has been appointed by a Law, and that Law is the Convention. The learned chairman has suggested that the bases form part of the Convention because they are referred to in the final Convention. The (145) fact that the document refers back to a previous paper does not justify the taking in of both documents before the Commission. I think it is perfectly understood that the Commission is a judicial tribunal, and so before taking proofs it should determine the law on which it stands. It seems that the law says that there shall be taken into consideration everything that relates to the construction or equipment of the road,—that is, anything concrete. Mr. Schramme has said that the complaints on the part of the people prevented the company's carrying out of the enterprise; we shall prove that the company was always in default. But we do not want to be led into this discussion at present, as the question at issue is the limits which bind the Commission. All through this Convention we find that "*obras* and *trabajas*" means work done and all the necessary expenses to carry on the work of construction only, and no engineer or judge would say that an engineer was not necessary for laying out the work. We say that under the legitimate and fair scope of this Convention the Commission is to take into consideration the necessary expenses of engineers, surveys, laying out of the road and expenditures necessary for doing the actual construction work, grading, bridges, etc., upon the road. Then we equip the road. All this is what the Government is prepared to pay for. The Government never intended to pay for expenses or losses incurred by the enterprise itself; the company may have had a broader scope and have had other railways in view. Is it reasonable to suppose that the Government should pay for the unwise or foolish expenses incurred by the enterprise on every side? The Government has said: "Now we have the railway, we want to pay for it." Our friend says that nine hundred thousand dollars odd is the

amount of the claim; how strange it is that the company should be willing to accept $200,000 on account, and be willing to turn the road over on that? It is essential that we get a fair translation of this Convention. The Convention says "work completed." We do not complete interest, traveling expenses, loss of time and other such items (146) included in the claim of the Cauca Company. What we are going to pay and what the Government intended we should pay is an indemnity for every kind of completed work done during the time the road was in charge of the Company. That is limited by the Spanish words "*trabajos y obras ejecutados*," and is the most vital part of the Convention. We see that that includes work of every kind done by the Company while in charge of the road, such as engineers, rolling stock, work done, materials imported, and everything now in existence, Does not Article 3 of the Convention prove this? In Article 5 we read that the Commission shall "appraise," in order to determine the indemnity. Throughout the entire paper there is nothing to indicate the payment of losses. The Company may have incurred losses outside of this particular matter. We cannot ascertain the amount of the losses, but we can ascertain the money actually expended. Later on we see in the Convention, that the Commission shall examine the books and see what has actually been spent on the works and then inspect the property. The Government does not want to place an extremely low value on the works; the Government is willing to pay what the Company did actually pay for such work, as proved by the books and inspection of the property.

After discussion.

The CHAIRMAN: I will only say that this Commission realizes fully the responsibility and the unique position in which it is placed, as the convention authorizes it to decide this matter finally and without appeal. We have no reason to suppose that the Cauca Company has gone outside of the purposes for which it was organized. This Commission is to determine the amount expended by the Company on the Cauca railway. The question of damages we have concluded is not before us. We have simply to determine, at present, the intention of the parties. On looking into the document, we find that the Commission is to indemnify the company for the amount of money expended on (147) the work. The same words may have very different meanings, therefore it is not only relevant, but important to find out the intent of the parties. Your chairman has given close attention to the several points argued so ably by both

sides. The written conclusion before you was designed to bring the parties together in accordance with the spirit of the convention, to wit: to indemnify one party for work done, and not to admit anything that might appear as damages or penalties to either party, and this is the only basis on which to settle matters of this kind. Your chairman believes that the Government readily intended to pay the Company what it had expended, there are preliminary and other necessary expenses besides the actual work of construction. Now, before going down there to see if this physical work is actually in existence, there are many items which cannot be seen—materials such as medical supplies, provisions, etc., which have necessarily disappeared by lapse of time and use, and it would be impossible to determine every item by visiting the spot; hence the need of an examination of the books and accounts. This is the reason, gentlemen, that your chairman has rendered the opinion submitted after much consideration, and he can really see no other way of coming together. By cabling to the Government the object will not be reached, since the Government has relegated its power to the Commission. I think it is fair that both parties should make concessions so as to meet on a satisfactory basis and go over the accounts, rejecting those that may not be regarded as legitimate and authorizing me, as umpire, to settle any items in dispute. In this way we may hope to reach a conclusion, even though it be not entirely satisfactory to either party. I must take the responsibility.

Mr. ROBERTSON: May I ask the chairman whether it would not be possible to classify the items in a general way, so that we might know what items under the ruling were included and what excluded? Then, on an examination of the list, the Government would feel that it had included such items they intended to include, and there would be no question on the matter.

(148) The CHAIRMAN: It is a difficult matter to classify the account in advance of an examination of the works. Each item will be a question in itself. It is going to be a very laborious matter. It will rest with the Cauca Company to bring proof for each item and prove that it was properly expended.

Mr. ROBERTSON: Do I understand it to be the scope of this decision that the Commission feels itself entitled to take the accounts of the Cauca Company and ascertain and allow for all sums which it legitimately expended in the enterprise whether laid out on engineers' work, construction work, equipment, or with relevancy to the enterprise broadly considered?

The CHAIRMAN: My view is not to limit our investigation to the mere expenses on the work but to take into consideration all expenses of the company that show both sides of the account, receipts as well as expenses, in order that we may determine what are legitimate and necessary for this work.

Mr. Robertson then moved that the Commission adjourn for a week in order to enable their side to communicate with the Government. His clients were so strongly of opinion that the decision or ruling was outside of the intention of the Government, that he wished and felt it a duty to communicate with the Minister before proceeding. Of course, if the Minister replied that the intention was really so, they would readily agree.

Mr. STINE: It looks like a threat being held over us. I object to the delay.

The CHAIRMAN: I have listened with interest to your arguments and I see nothing therein to induce me to modify my opinion.

Mr. STINE: In the first place, the decision of to-day is exactly identical to that of a week ago and there has been plenty of time to go to Washington in the meantime. I do not think that the chairman has based his decision on Mr. Schramme's evidence. The chairman has practically stated that nothing will induce him to change his opinion, and I suggest that we go on with this matter; otherwise it will never end.

Mr. ROBERTSON: It is a very important matter and (149) we would like to get the approval of our Government on the point. Supposing now we take a simile. I purchase a white horse and I get the horse and go away without paying for it. Supposing the chairman says I owe him for the horse and finally we leave it to Mr. Schramme to decide whether I ought to pay for it. Then the chairman gets up and says: "I not only did not pay for the horse, but I also purchased from him a brownstone building for $250,000 and did not pay for it." Now, suppose Mr. Schramme gets up and says: "I have full power to arbitrate, and I think Robertson ought to pay for the house." Should I be required to go on with the arbitration? Should I not be justified in saying that we were discussing something not submitted for arbitration, and that I declined to go further? It is the same with this question. The general meaning as laid down in Mr. Chairman's opinion was never submitted, and we must consult our Government. Our Government is not here—it is thousands of miles away. If it was in the next room you would not object to my stepping out and consulting

it. Hence, we are entitled to the necessary delay for communicating with the Government.

Mr. Stine objected to any such communication.

The CHAIRMAN: The question is a more serious one than mere dalay; it opens up the whole case. The Commission is here to represent the Government, which has assigned its power to it. It cannot modify the agreement, but its intention may be proven by testimony, and it is for us to determine the lines it has authorized us to follow. Were an appeal to be taken, the question would then be on how to frame the telegram to the Government, so it might understand the issue, since it has not heard the discussion leading up to it, and the answer would undoubtedly place the Commission in a very awkward position, and might defeat its end.

Mr. CISNEROS; It is in the scope of this agreement to call the witnesses. The Cauca Company have called Mr. Schramme and Mr. McKinney on their side. Surely, we (150) are entitled to show by inquiring what the intention really was—what the Government realy did mean.

Mr. STINE: The telegram in itself would not be admissible as legal evidence.

Mr. CISNEROS: The telegrams could be prepared before you all.

Mr. STINE: That would make no difference.

Mr. CISNEROS: Do you mean to say, then, that if Mr. McKinney gives his evidence as to what Mr. Schramme said and we show a telegram from Dr. Caro, President of the Republic of Colombia,, that Mr. McKinney's evidence would be received and the President's message will not be received?

Mr. STINE: Decidedly not; it would be not legal evidence. If every party every time it gets a decision against it is going to obtain information and opinions, if this Commission is going to depend on that, I think this Commission will take a step which is in the highest degree improper. The fact of the matter is that a decision has been rendered. The other gentlemen may send telegrams as much as they please. It has nothing to do with us what the Minister at Washington may say; Mr. Pena is the direct reprosentative, and he knows all about it. The Cauca Company is not going to be a party to the framing of any telegram. We have had a ruling; if the ruling had gone against us, we should have gone ahead and submitted our evidence. This is *infra dig.*

Mr. ROBERTSON: On the contrary, I think it would be

quite dignified. The representative of the Government ought to be able to consult his Government. If the Government is going to be placed in this position it may be necessary for the Commission to go out and examine the President. We have been surprised, and we wish to communicate with the Government.

Mr. Stine remarked that there was no surprise. They had had seven or eight weeks to act in the matter.

Mr. CISNEROS: I wish to call attention to the fact that we do not object to the Cauca Co. taking three weeks to prepare their statement.

(151) Mr. Stine then said it represented a larger amount of work than what was accomplished by Mr. Cisneros in the same time. Mr. Cisneros replied that he must not think because it contained only two pages that it did not represent a large amount of work, the result of which Mr. Stine would discover in due course. He was perfectly convinced that the last paragraph in the chairman's opinion might in some way be construed as outside of the convention. Mr. Schramme had stated that only himself and the president were present; nobody else.

The CHAIRMAN: If it will remove the difficulty I am willing to strike out the last paragraph of my opinion.

Mr. STINE: Does that mean that if we strike that out we shall proceed?

The CHAIRMAN: This is not a matter that we can refer to anybody else. We have no right to go outside of ourselves to settle the point.

Mr. ROBERTSON: Of course, we are quite ready to go on with the taking of proofs. The postponement is asked for on that understanding. We ask this because we have to communicate with our Government. The chairman will understand our position; we do not say that this Commission is not authorized to pass on this point; but we say that the position is so clearly the same as the "white horse and the brown stone house" that we want to notify our Government. We are entitled in this serious matter to get the instructions of our client. I have never heard of requisitions of this kind being denied.

The CHAIRMAN: The Chair will rule that any legal evidence can be introduced on the point. The sending of a telegram would be irregular, and the Commission would be placed in a very difficult position.

Mr. ROBERTSON: It seems to me beyond doubt that we are entitled to consult our principals.

The CHAIRMAN: The Chair does not rule that you should not confer with your principals; it does rule that

whatever your principals may advise would not affect this Commission, since it cannot change the mutual assent (152) already fully and finally given to the convention.

After some further discussion on the question of the adjournment:

Mr. ROBERTSON: Is the chairman willing to place on record that the representative for the Government accepts without prejudice the opinion of the chairman, and he retains the right to withdraw from the Commission after receiving instructions from the Government?

The CHAIRMAN: Yes,

Mr. STINE: I do not see why we should accept that.

After discussion:

The CHAIRMAN: It is not the official duty of this Commission to recognize the Government in this case as an original party to the Commission. Whatever is done should be done officially by the representatives on both sides, standing for their principals.

Mr. Robertson asked that the meeting be postponed in order to give the representative of the Government time to confer with his Government. Mr. Stine objected to the terms of the postponement, and, after the point had been discussed, the chairman ruled that it is not necessary to state officially on the records the purpose for which the adjournment is asked; the postponement of this question is made without prejudice to any party, and, in the meantime, the examination of the witnesses of the Cauca Company will go on. On a motion, duly seconded, this Commission adjourns and will meet for that purpose on Wednesday, the 2nd inst., at 10 A. M.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Fifth Session.

(153) Held Wednesday, June 2, at 10 A. M., at same place.

EDWARD BLUM SWORN ON BEHALF OF THE COMPANY.

Present—Commissioners, Attorneys and Counsel as before.

The chairman stated to the Commission that he had

given the question of his ruling a great deal of thought during the night, and as the only point of difference, in order to come to an agreement, appears to be the specific statement in the latter part of it, he proposed to remove the cause of objection (in order that the Commission might agree) by withdrawing from his ruling the paragraph commencing with the words "In determining the items" down to the words "welfare of the country," and he desired that the Commission might accept the same, and thus be at liberty, at the designated time, to consider the question. He added that he had been chiefly influenced in doing this in order to avoid the necessity of referring this matter to the Government, which is a very serious matter and would encumber greatly the proceedings. It seemed to him that the Government had left this matter to the Commission: and this will help to remove the impression that there is any attempt to put into the Convention anything not provided for therein; therefore, he would amend his finding in this way, and unless objection is made it will so stand, approved.

Mr. Pena thanked the chairman for the step he had taken to bring about an agreement in withdrawing the paragraph in question, but at the same time he wished the adjournment for the discussion thereof to stand good, as settled at the previous meeting, in order to give him leisure (154) to consider the opinion. This, of course, would not impede the examination of witnesses in the meantime.

The postponement for eight days of the consideration of the chairman's opinion was agreed to and it was resolved to proceed with the examination of witnesses in the meantime.

The chairman then said: We have met for the purpose of examining witnesses and their evidence will now be taken.

The oath of affirmation having been duly administered to Mr. EDWARD BLUM, Mr. STINE proceeded to examine this witness.

Q. What is your name? A. Edward Blum.

Q. Please state what your occupation has been during the last six years. A. During the first of these six years I was treasurer for the Cauca Railway; I was afterwards appointed assistant general manager.

Q. During this time where did you live? A. At Buenaventura.

Q. Who was in charge of the offices there? A. I was, during the whole time I was at Buenaventura, six years.

Q. During that time who kept the books of accounts? A. I did.

Q. Have you the books here; can you introduce them? A. I can.

In reply to the chairman's query as to what Mr. Stine proposed to prove by the examination of this witness, Mr. Stine said he did not propose to take up the general account but to prove certain things in connection with the construction of the road.

Q. Are these the books? A. Yes, sir. These are cop-
(155) ies of the books kept at Buenaventura up to October, 1893. After that we have no copy of the books, but we have copies taken from separate sheets sent from there to the New York Office.

Mr. ROBERTSON thereupon objected on behalf of the Government to anything but legal evidence being introduced. These books being copies, could not be considered as legal evidence.

Q. Have you any original books? A. We have not.

Q. What books have you from there? A. The original books for 1896 and 1897.

Q. What has become of the books kept over there prior to that? A. They were burnt.

Q. When? A. In January, 1896.

Q. Then the copies are copies of the books made down there?

Mr. Robertson objected to this as a leading question. Mr. Stine considered that leading questions were quite admissible, but Mr. Robertson objected to words being put into the witness' mouth. The books were copies, and how could copies be made of burnt books. If the copies were from original documents, such documents must be put in. Mr. Stine suggested that there would be time to object to the point later, and the examination proceeded.

Q. You said that the original books were kept at Buenaventura, and that they were burnt. When did this occur? A. 27th January, 1896.

Q. Had you no records made prior to this in relation to the accounts of the Company? A. In what way?

Q. Were there no vouchers? A. Of course, but they
(156) were all there and were destroyed.

Q. Now, at no time were there copies made there? A. Oh, yes.

Q. When? A. They were made monthly and sent to the N. Y. office.

Q. In addition to these records, were no other records sent to this office? A. Yes. In addition, at the request made to me in 1893, I sent a copy of the set of books kept there.

Q. Will you please identify those books? A. Well, gentlemen, here they are This is a copy of the cash book, ledger and journal.

Mr. Robertson asked the privilege of putting a few questions to the witness, this being the regular course. This being allowed, Mr. Robertson cross examined the witness as follows:

Q. Now, Mr. Blum, in whose handwriting are the entries in these books? A. In mine.

Q. All of them? A. Yes, all.

Q. Were you present at the fire? A. I was.

Q. You have personal knowledge that the books were burnt? A. I have.

Q. Where did you see them last before the fire? A. In my office.

Q. And that was part of the same building? A. It was.

Q. From what did you make these copies? A. From the originals in my own handwriting.

Q. Every entry? A. Every entry from October, '91, is in my handwriting.

Q. You mean to say then, broadly, that every paper (157) from which these copies were taken was an original and in your own handwriting? A. From the time I arrived, yes.

Q. Are there no entries or extracts from the vouchers sent to the New York office? A. No.

Q. There is no entry in these books originating in the United States? A. None at all.

Q. You say that these matters originated solely from the Buenaventura office? A. Solely.

Q. Thank you; that is all.

CHAIRMAN: Q. Did you make any reports subsequent to 1893? A. I made monthly reports.

Mr. PENA: Q. You said you were in Buenaventura during the whole of six years? A. Excepting short trips to Cali, etc., for a few days.

Mr. PENA: Q. Were the books always kept at Buenaventura? A. They were.

Mr. PENA: Q. Are you aware that the Government asked to see the books at Buenaventura and that they were

refused? A. During the time I was at Buenaventura there was no request for made for these books.

(After reflection). I beg your pardon. I recollect that Mr. Fco. Rebolledo called once, and he was informed that no books of the Cauca Company were kept in Buenaventura. That was the answer given to him.

(158) Mr. PENA: Q. But the books of the Company were there? A. There were no books of the Cauca Company. The books of the Cauca Railway were there showing the mere administration at Buenaventura. These books were not asked for.

Mr. PENA: Q. Are you quite certain as to which books were asked for? A. I am certain that it was the books of the Cauca Company.

Mr. CISNEROS: Q. Do you remember the date? A. I do not remember.

Mr. CISNEROS: Q. Say more or less. A. Well, about December, '94.

Mr. CISNEROS: Q. Never before? A. Not to my knowledge.

Mr. CISNEROS: Were you in charge of the books in 1891? A. I was from October, 1891.

Mr. CISNEROS: Q. Do you know why Mr. Rebolledo wanted to see the books? A. He did not tell me his object.

Mr. CISNEROS: Q. You do not know whether there was any further action after the Government asked for the books? A. I know nothing about it.

(159) Mr. Stine said that he intended later to show that the Government had applied for an examination of the books in New York, and they had been placed at the disposal of the Government whenever they wished to examine them. He stated this for the information of his learned friends as they were perhaps not aware of the fact. He then submitted that the books be received as evidence.

Mr. Robertson objected on the ground that the books were not the best evidence of the facts re-stated in them, and that there is no proof that the witness had personal knowledge of the facts re-stated therein.

The chairman asked Mr. Stine if he was able to produce any originals of the books and Mr. Stine replied in the negative.

The chairman then ruled as follows: The ruling of the chair is that these books be accepted as evidence in the absence of any knowledge of authenticated originals and the inability of the Commission to obtain the same.

Mr. Robertson, on behalf of the Government, excepted to the same.

THE CROSS EXAMINATION OF THE WITNESS CONTINUED.

Mr. PENA: Q. Do you know how the books were burnt and why? A. I have no proof that the fire was accidental, nor have I proof that it was the work of an incendiary. All I know is that it was so sudden that I hardly had time to get out myself.

Mr. PENA: Q. Is there any evidence of a crime? A. I do not know that there was any proof of incendiarism. It was assumed to be such on account of the hostility shown against the Company at the time.

(160) CHAIRMAN: Q. Was there no investigation? A. An inquiry was set on foot by the authorities, but no tangible result came from it.

Mr. PENA: Q. Was nobody accused of incendiarism? A. Not to my knowledge.

CHAIRMAN: Q. Did the investigating committee make any report? A. I presume they did to the Government.

CHAIRMAN: Q. You mean you do not know? A. No.

Mr. CISNEROS: I heard a story to the effect that the fire was caused by the cook drying some wood fuel on the stove, and that an employee of the Company had repeatedly warned said cook that the practice would result in accident. Have you heard of that version? A. Yes, I have. I gave evidence to that effect myself at the time. Of course I could not know that it was actually the case.

CHAIRMAN: Q. What was the character of the building? A. Zinc roof, old timber, inflammable, some 25 years old.

Mr. PENA: Q. You say that you do not remember the date? A. Oh, yes. I have said already the 27th January, 1896.

(161) Mr. PENA: Q. Was there any excitement at the time in Buenaventura itself? A. What do you call excitement?

Mr. PENA: Q. I mean as regards animosity against the Company? A. If you mean attacks by the press, and talk amongst the people, etc., there certainly was.

Mr. CISNEROS: Q. There is no press at Buenaventura? A. No; but there is in Cauca.

Mr. PENA: Q. I refer to Buenaventura exactly? A. There was always hostility.

Mr. PENA: Q. Nothing unusual, though? A. Well, there was no riot. I remember there was a demonstration just outside my window before I left.

Mr. STINE: Q. A serenade?

Mr. SCHRAMME: Q. Was not the building burned the day after the news was received at Buenaventura that an agreement had been signed for the amicable termination of the Company contract? A. It was.

Mr. SCHRAMME: The very next day after we signed the contract we received a telegram from Buenaventura announcing the fire.

Mr. ROBERTSON: Did you understand from the amicable settlement that the Government would have to pay certain amounts to the Company?

(162) Mr. BLUM: Yes.

Mr. ROBERTSON: Q. If the Government was to pay anything to the Company, was it to reach or ascertain the amount to be so paid by investigating those books?

Mr. STINE: That is an improper question, and you are aware it is. I object to the question.

Mr. Robertson replied to Mr. Stine saying that Mr. Schramme had brought up the subject by introducing an improper question with regard to the house. Either side has consequently a right to throw light on the matter.

Mr. BLUM: The Government could ascertain the amounts due to the Company by the statements sent to them by the Company, which could be verified by the books in New York.

Mr. ROBERTSON: Also by the books at Buenaventura, if it had an opportunity to look at them.

A. I doubt it very much.

Mr. ROBERTSON: Could not the Government, as you understand it, have verified the amount to be paid by the examination of the books at Buenaventura? or at least verified part of the amount by such examination?

Mr. Stine made exception as to leading the witness on to conclusions, but the question was allowed to stand as entered.

A. (After asking Mr. Stine if he should answer) I do.

Mr. Stine then proceeded with the examination in chief:

Q. Will you be kind enough to take up the Ledger?

Mr. ROBERTSON: This witness is now testifying that the Government, so far as these items are concerned, might (163) have verified the books from which these copies were made by the originals.

Mr. BLUM: I said that the Government might have verified the accounts which were presented for payment in the accounts of the Company.

Mr. ROBERTSON: Q. Could it have verified the ac-

counts now referred to by examining the accounts furnished or original reports made to the Government from the Cauca Company? A. Yes.

Mr. ROBERTSON: Q. To what extent? A. To the extent of the receipts of the road.

Mr. ROBERTSON: Q. Nothing else? A. Nothing else.

Mr. ROBERTSON: Q It appears then that there is original evidence as to the receipts of the road? A. I mean as to the receipts of the operation of the road.

Some discussion then ensued as to whether any reports of construction were sent to the Government. The chairman said that such objections could be raised at the proper time when each item came up for discussion.

Mr. STINE: Q. Now here is page 2 and 3 of the Ledger. Do they contain an an account of the disbursements? A. It is an account of the receipts and proceeds derived from the freight. Page 4 is the receipts from the sales of passengers' tickets. At pages 6 and 7 is the account of the drafts drawn on the New York office by the (164) Buenaventura office for the purpose of paying laborers' wages and so forth.

Q. Please read the first entries. A. The first entry is a draft No. 2 for $2,000.

Mr. ROBERTSON: I object to the item on the ground that there is no proof of the same, and that it is not the best evidence. I object also on the ground that there is no proof here as to the purpose to which the proceeds of the drafts were applied. The draft itself should be introduced and then he would have an opportunity of asking the witness if he knew that the amount was actually received and expended by the Company. The Commission had resolved that only legal evidence be admissible, and he therefore did not understand why secondary evidence was introduced when the original draft was available.

Mr. Stine, addressing the chairman, said that they had wasted an hour on this kind of discussion and he wished to be allowed to proceed. He wishes to introduce the books; the vouchers would be introduced afterwards. It is the proper course of procedure.

After discussion the chair ruled that the best evidence must undoubtedly be produced, but as the introduction of the books was merely a matter of procedure, it was imma-

terial whether the books were introduced now or afterwards, as the vouchers would doubtless soon follow.

Mr. ROBERTSON: I except to that.

Mr. BLUM: The first item is draft of $2,000 drawn on New York.

Mr. ROBERTSON: Q. By whom? A. Buenaventura office. From January 1st, 1891, till October 31st of the same year I was not present.

(165) Mr. ROBERTSON: I object on the ground that this witness knows nothing of the items referred to.

THE CHAIRMAN: The objection is sustained.

Consequently the items prior to October the 31st on page 6 of the Ledger, $2,000 to $6,500 were not paid in.

Mr. STINE: Q. As regards the following drafts did you receive the cash for the same? A. I did.

Q. What was done with it? A. It was employed in the payment of salaries, etc., for the general purposes of the Company.

Mr. ROBERTSON: It is understood that the Government raises the same objection as above stated to all this class of evidence.

A point of technicality having arisen, it was decided to draft out a description of all the drafts as they stood in the book as follows:

The Cash Book, Ledger and Journal were marked by the Secretary as Exhibits 1, 2, and 3 claimant, respectively.

(Here was read list of drafts, which were produced, corresponding to Exhibits 4 to 30 claimant.)

Mr. STINE: Q. Are the items not put in, viz., the $2,000, Jan. 1st, to $6,500, October 31st, copies of the original books of the Company from which these entries were made? A. Yes; they are.

Q. Do you know in what handwriting they were made? A. Yes; Mr. Sidney F. Schramme.

Q. Please figure up the total of the various drafts drawn by you as shown by these books. A. The amount is $84,845.68.

(166) Please select from this package of drafts those corresponding to the entries just referred to.

Three drafts, Nos. 14, 15, and 16, were then put in and objected to by Mr. Robertson on behalf of the Government

on the ground that their payment has not been proven, and in the next place because there was no evidence at all to the effect that the proceeds thereof were applied to the laying out, survey, construction or equipment of the Cauca railway.

THE EXAMINATION WAS CONTINUED.

Q. In addition to the proceeds of the drafts to which you have just testified and to the receipts from the railway already referred to, was there any other item or items of money received by you while in charge of the offices at Buenaventura? A. Yes, sir.

Q. What? A. There were sums of money paid by the Colombian Government to the Company for interest due to the Company.

Q. What else? A. That is all I can remember.

Q. Do you know of no payment made by the Government for the return of an amount deposited by the Company? A. Yes; there was an amount of $50,000 deposit repaid by the Government in libranzas.

Q. This $50,000 was returned at Buenaventura? A. Yes.

Q. What was done with it? A. The libranzas were handed over to Mr. Simmonds, of Cali, in order that he might obtain funds for the Company.

Q. Did he do so? A. Yes; very slowly.

Q. Please confine yourself to my questions. Did he receive the money? A. Yes. The money was used for la-
(167) borers' wages and general expenses.

Q. In addition to the payments made for laborers' wages, general expenses and salaries, were there payments made to other employees, such as engineers? A. Yes; payments were made to several employees.

Q. Engineers? A. Yes.

Q. Please state what you know with reference to the payments made to engineers? A. In what respect?

Q. As to amounts and so on. A. The salary of Mr. Carter was $250 and all expenses; Mr. Burgess, $200; Mr. Wilson at first $125, afterwards he got $200; Mr. Shaw $125; Mr. Boyle $100; Mr. Murphy $125; Mr. Kolb $150, all American gold. I may have forgotten some names. Dunn also, $125.

Q. Was there more than one engineer's party in the field? A. We had two engineer's parties.

Q. How were they made up? A. Chief engineer, transitman, levelman and gangs of *peones* about 15 or 18 for each party.

Q. How many routes did they survey. Do you know? A. Yes, I have a fair knowledge of it.

Q. How many?

Mr. Robertson objected on the ground that the expense of surveying abandoned routes could certainly not be added to the cost of the construction of the route finally adopted. After some discussion the

CHAIRMAN: The ruling is that the number of routes surveyed is not material. It is the distance and territory covered. A thorough examination of the ground has to be made, but the number of routes is not material.

Mr. Robertson stated that the Government could not be held responsible for any expenses made on the examina-
(168) tion of abandoned routes.

Mr. STINE: Unless it can be proved that the expense was fraudulent everything my honorable friend has said is not germane.

The Chairman then repeated the above ruling.

Mr. CISNEROS: There are different kinds of surveys. The point is, can you introduce before us the plans, maps, and profiles of the surveys made?

EXAMINATION CONTINUED.

Q. From where to where were the surveys made? A. From the summit of Tocota towards Cali, about 25 or 27 kilometers.

Q. What other survey? A. From the same summit towards Juntas, about 60 to 70 kilometers.

Q. Any other? A. Then there was a survey made from the summit called Cresta de Gallo towards Papagayeras.

Q. How far? A. I have no idea. There was another survey made on the left bank of the river Dagua from Juntas to the Station of San Jose about 20 kilometers.

Q. Were these preliminary surveys, or were they final location? A. Preliminary surveys.

Q. Were there no final locations made, then? A. On part of the road from San Jose Station towards Juntas.

Q. Where were the tracings of these surveys kept? A. At Buenaventura.

Q. Where are they? A. They were turned over to the Government.

Q. The tracings? A. The tracings, surveys, etc., were turned over to the Government.

Mr. SCHRAMME: We hold the receipt for them.

(169) Mr. CISNEROS: Q. Were none sent here to New York? A. I have no knowledge of it.

By Mr. CISNEROS: Q. Have you ever made the estimate as to the cost of these surveys? A. The estimate for the surveys was never made separately, it is included in the amount of drafts and of the $50,000.

EXAMINATION CONTINUED.

Q. Were you present when the road was handed over to the Government? A. I was.

Q. Before the delivery, did you go over the line? A. I did.

Q. With anybody else? A. Yes.

Q. What did you do? A. A thorough inspection of the condition of the line from Buenaventura to San Jose.

Q. Did you inspect the line beyond San Jose? A. No.

Q. When you went to inspect the line from Juntas to San Jose, who went with you? A. Mr. Julian Uribe and Mr. R. Ganzalez Concha, commissioners of the Government, to receive the line.

Q. What did you do when you went over the line? A. We inspected every piece of timber, tie or bridge on the road.

Q. Did you test them? A. Yes, with hatchets and points driven into them.

Q. What was the general condition of the road? A. That it was in good condition.

Q. Any rotten timber?

Mr. CISNEROS: Q. Are you aware of the second report of the commission that received the line? A. No.

(170) EXAM. CONTINUED.

Q. What was the mileage expressed in kilometers of the road turned over? A. It covered 20K.240 to Cordova, and beyond that 16K.500 to San Jose.

Q. What else? A. Besides that 7 kil. not fully completed with grading interrupted in some parts.

Q. Are you familiar with the condition of the 20K.240 turned over by the Government to the Cauca Co.; I mean the condition at the time you reached Buenaventura? A. Yes, I am.

Q. State it. A. It was not in a very good condition, but it was transitable.

Q. Do you know whether or not, prior to the time that the road was turned over to the assignor of the Cauca Co., the road had been in the possession of the Government? A. I do.

Q. Do you know the interval between the time of the delivery of the railway by Mr. Cisneros to the Government, and the delivery by the Government to the Cauca Co.? A. Yes; five years.

Q. Is it not true that in those tropical climates a very short time is necessary to greatly depreciate the value of the road? A. It is a fact.

Q. On the 20K.240, was not considerable work done to restore the same? A. Quite a lot.

Q. Of the part beyond the 20K.240, what was the condition of that part of the road when you arrived there? A. I reached there eight months after it was handed over, (171) and at that time I understood that considerable work had been done on it. The road was transitable.

Q. That included how many klometers beyond Cordova turned over by the Government? A. I am not now in a position to testify.

Q. From Cordova to the point where Mr. Cisneros had stopped work, what was the distance? A. I must state that when I reached Buenaventura the rails were laid to K. 31.500 and the grading was ahead.

Q. At what do you estimate the cost of the 6 or 7 kilometers to San Jose in a finished condition, so far as grading is concerned?

Mr. Robertson objected to the question as irrelevant.

Mr. STINE: Mr. Cisneros, in his letter to the Commission, says that we built only 6½ kilometers of road. I will show that we reconstructed the K. 20.240. In addition to that, we had to reconstruct the 5 or 6 kil. to Cordova. Beyond that we constructed the difference between the 5 and the 16½ kil. we turned over, and beyond that there were 7 kil. partially constructed. It is material to know to what extent and how much it would cost to put it in serviceable condition.

The CHAIRMAN: That is not the question before us and it is anticipatory.

STINE: I wave that question. Mr. Blum is going away, hence my reason for having desired his statement on record.

Mr. Stine then put in the inventory dated 27th January, 1897, and the examination continued.

Q. Do you know this document? A. Yes; it is the original inventory of the road as turned over to the Colombian Government.

The Secretary marked the same as "Exhibit 31, Claim-

ant," and the same was accepted subject to examination by the Government.

(172) Q. Where were you born? A. France.

Q. How long have you lived in Colombia? A. Six years.

Q. Are you familiar with the Spanish language? A. I am.

Q. Are you able to read it readily? A. I am.

Q. And write it grammatically? A. Fairly well.

A. Are you familiar with the English? A. I think so; I have known it for 18 years.

Q. You are qualified to interpret the meaning of both languages? A. I am.

Q. Please read over the inventory and report.

Mr. Blum then read over the inventory in Spanish and English.

Q. You were assistant General Manager at the time the road was turned over? A. I was.

Q. You were there continuously in and about the railroad for a period of six years? A. Five and a-half years, to be accurate.

Q. Barring the few days, as you said, when you were at Cali? A. Yes.

Q. During that time was there construction going on? A. Continuously.

Q. Up to the year 1895? A. Yes.

Q. Up to what period of 1895? A. At the beginning of 1895 there was an interruption.

Q. Previously, none? A. No.

Q. Were these interruptions of long duration? A. About three months successively; six months in all: two interruptions of three months each.

(173) Q. You saw work done up to the time the railway was turned over? A. I did.

Q. Do you know that in 1894 the Government passed a law confiscating the railroad?

Objected to by Mr. Robertson on the ground that the Government had not confiscated the road. The word was withdrawn.

A. I do.

Q. What was the law?

Objected to by Mr. Robertson on the ground that the law is the evidence. A copy of Law 60 of 1894 was produced.

Q. What is that paper? A. It is the translation of the law.

Q. Were you familiar with said law? A. I was familiar with it.

Q. Will you please read it?

The law was then read.

Q. Was this law published and circulated in 1894? A. It was to my knowledge.

Q. By the law just read the ownership of the Cauca Co. to the line ceased; is not that so?

Objected to by Mr. Robertson on the ground that the witness was not a judge, and his opinion was immaterial.

Q. When did the Colombian Government take possession of the road? A. Twenty-seventh January, 1897.

Q. Previous to their taking possession of the road and up to very last, after the law was passed, did the Cauca Co. continue to construct and improve the road? A. It did, after the law had been promulgated.

(174) Mr. Stine announced that his examination of this witness was concluded, and the attorney for the Government was at liberty to commence his cross examination.

The hour being advanced, it was decided to adjourn the meeting until Thursday at 1 P. M.

The chairman announced that in accordance with the views of his co-arbitrators it was decided to obtain the services of an expert accountant for the purpose of classifying the accounts of the Cauca Company, the books and vouchers to remain in the custody of the chairman, who would submit them to an impartial and competent accountant.

On a motion, duly seconded, the meeting then adjourned.

(Signed.) LEWIS M. HAUPT,
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER,
Secretary.

Sixth Session.

(175) Held Thursday, June 3d, at 1 P. M. at above place.

CROSS EXAMINATION OF E. BLUM BY THE GOVERNMENT.

Present—Commissioners, Attorneys and Counsel as before.

The chairman said that this meeting had been called for the purpose of cross examining Mr. Blum.

Mr. Stine asked permission of the chair to put a few more questions to the witness, and this was granted.

Q. Are you familiar with the handwriting of Mr. C. F. Schramme? A. I am.

Q. Have you seen him write? A. I have.

Q. How many times? A. A number of times.

Mr. STINE: That is all.

Mr. Robertson then proceeded to cross-examine Mr. Blum.

Q. What is your professional business? A. I am a railway man.

Q. Have you any other professional business? A. I have not, except prospects.

Q. Have you ever had any other? A. I have.

Q. Please state it? A. I have been an accountant.

Q. Whereabouts? A. California.

(176) Q. How long? A. About eight years.

Q. Do you consider yourself an accomplished accountant? A. I do.

Q. Take, for instance, Exhibit No 1 of yesterday. As an accountant what kind of book would you call it?

Mr. Stine objected to this line of inquiry as he did not see what it tended to prove. He understood that the chair had ruled that there was only one class of evidence admissible, and that was as regards questions of expenditure and the verification of such expenditure.

The chair ruled that the evidence was admissible as showing whether the entries in question were correct or the contrary.

CROSS-EXAMINATION CONTINUED:

Q. What is this book? A. It is a Ledger.

Q. What is Exhibit No. 2? A. Journal entries.

Q. What is Exhibit No. 3? A. Cash book.

Q. Is Exhibit No. 1 a book of original entry or not? A. It is not.

Q. How is it made up? A. It is a copy of the original.

Q. I am assuming that, for the purpose of this examination, we are treating this book as an original Ledger. How is made up? A. It was taken from the entries in the Cash book and in the Journal.

Q. Does it contain any original entries? Entries for the first time put in the Ledger? A. They always pass from Cash book or Journal.

Q. In Exhibit No 1 will you put out the first entry which was copied from the entry which you yourself made in the original Ledger, from which this book was copied? A. It is October 31st, 1891.

(177) Q. That is an item of $2,300, gold? A. Quite so; gold.

Q. And the amount placed close to it is its equivalent in Colombian currency? A. That is quite so.

Q. Now, the number 22 preceding the line, does not that indicate the folio on the cash book? A. Yes.

Q. When cash is not stated as the page in reference, I presume it means the Journal? A. Precisely.

Q Referring to this item of $2,300. Did it come into your hands individually? A. Yes.

Q. Can you state to the Court the exact purpose to which it was applied? A. I cannot.

Q. Can you take any item in the account of which that entry is a part, and name a particular individual to whom the sum mentioned in that item was actually paid? A. If you will give me the book I will. The sum was given in a draft to one individual and negotiated for paper money.

Q. I mean whether or not you know of a specific payment as regards to any one of these items, and state whether or not it was paid to a particular individual? A. If I sold the draft I can name the party. If you want me to name the party to whom the draft was paid, I can say it was paid to laborers, etc.

Q. In substance, with respect to the paying out on behalf of the Cauca Company of any of these items, while you cannot name any particular individual who received any special sum, you are satisfied in your own mind, if I understand you rightly, that you can say that they must have been paid out to workmen, some of whom you might be able to mention? A. It is not that I know it to my satisfaction. I have absolute knowledge of the matter.

Q. You cannot name any particular man who received
(178) any particular sum? A. I can.

Q. I speak of laboring men? A. Do you want the names of all laboring men?

Q. Well, name some? A. Mr. Carter.

Q. He is not a laborer. A. He was an employee of the Company.

Q. Can you not point to any items of this kind and show that on your own knowledge you know that it was paid to any particular laboring man? A. There was no particular laboring man that got such an item.

Q. Take the second item of this kind following that of October 31st, being cash item of $2,500 American gold; do you know the individual to whom it was paid? A. Give me the cash book, please.

Q. Can you tell from the item before you? A. Yes, it was paid to no one individual.

Q. Can you tell from the entry itself without reference to anything else to whom it was paid? A. Yes, I can.

Q. You mean you can say for what it was paid, but not to whom? A. Yes, that is so.

Q. Take the cash entry of July 31st, 1892.

Mr. Stine objected to this course of examination upon the ground that it was irrelevant. A lengthy argument then ensued in which Mr. Robertson, on behalf of the Government, sought to show that the books put in as evidence —viz., Nos. 1 to 3—were not legal evidence in the sense of the word, and that as this Commission, at an earlier meeting, had ruled that only legal evidence should be admissible, he asked that the books in question should be stricken out as evidence on the ground that they were only hearsay evidence.

After listening to the argument on both sides, the chair stated as follows: "I realize the gravity of the situ-
(179) ation, but I think that the convention provides for emergencies of this kind, and we must abide by that convention." He then proceeded to quote Article 5 of the convention, and ruled as follows: "The chair assumes that until a man is proven guilty he is innocent, and we have, therefore, the right to assume that these entries are correct until proven fraudulent. Afterwards the entries in these books can be substantiated by the original drafts and documents. The time allowed this Commission is limited, and if we are obliged to secure original items from all parties, and to analyze all copies put before us, it seems to the chair that the work will be interminable, and, therefore, the ruling is, with due deference to the able arguments of both sides of the case, that, for the purpose of the Commis-

sion, these books are in evidence, as the basis of our investigation under Article V."

Exception was taken to this on the part of the Government.

CROSS EXAMINATION CONTINUED BY MR. ROBERTSON.

Q. You say that Exhibit No. 2 is a Journal? A. Yes.
Q. Which is the Journal?

The witness then pointed out the book in question.

Q. Are the entries in this book original, or are they copied from any other book? A. They are original entries.

Q. Entirely? A. Entirely; not proceeding from any other book.

Q. Did you copy this Exhibit No. 3 from beginning to end? A. I did.

Q. Was the original Journal in your own handwriting from October, 1891, to the end of this book? A. It is in (180) my own handwriting.

Q. Prior to that time? A. It is in the handwriting of Mr. S. C. Schramme.

Q. Where were you when you made this copy? A. Buenaventura.

Q. Do you remember just when? A. In October, 1893. I finished in November, 1893, if I remember well.

Q. Then what became of them? A. I gave it to Mr. Cherry at Buenaventura, and he took it to New York.

Q. You have not seen it since? A. I have not.

Q. How did you make the entries in the original Journal. Daily, weekly, or monthly? A. The entries appear monthly.

Q. Take for instance, as an example, the entries, page 6, June, 1891. There are among the entries one dated the 18th, and one dated the 19th. Did you enter the first one on the 18th and the other on the 19th? A. They were all entered at the end of the month.

Q. So that the dates 18th and 19th do not indicate anything at all—they do not indicate when these entries were made? A. They do not indicate any date at all, I believe. (After examining the book.) That indicates the dates of the emission of the draft.

Q. There is nothing on the face of the original entries to show when the entries were made in the original Journal? A. I believe there is.

Q. Please point it out? A. This is a copy.

Q. I know that. Was not this original entry made in the original Journal on June 18th? A. Yes.

Q. Then you meant to say in the original Ledger on the 18th of June you put down the entry under June 18th. Did you not say just now that the entries were made in the Journal at the close of each month? A. I meant by this to (181) say that the entries were made as they came in, and after that were put in monthly in my book.

Q. Don't you mean to say that you made a mistake? A. I misunderstood you; I did not make a mistake.

Q. That is, you made no mistake if you misunderstood? A. It may be a question of quibble.

Q. I make mistakes sometimes myself? A. Of course; so do I.

Q. In point of fact, you mean now to testify that the Journal entries are made from day to day as the dates indicate? A. That is the idea.

Q. What were the entries from the original Journal taken from? A. They were taken from my draft book or from the stubs, for instance.

Q. They were copies, then, from the stubs? A. Either from the stubs or the original drafts.

Q. Don't you know which? A. It would be hard to say.

Q. You could not remember any individual case? A. I could not.

Q. What has become of the original drafts or stubs: do you know? A. I imagine I know. I imagine the drafts are in the hands of this Company.

Q. How about the stubs of the drafts? A. They were destroyed in the fire.

Q. That is your impression? A. That is my knowledge.

Q. You do not mean to say that you actually saw them burn? A. I know the place where they were located, and I know the place was destroyed by fire.

Q. Do you know whether or not these stubs were stolen from the office before the fire? A. I do not know that they were.

Q. When did you see them last? A. Two or three days before the fire.

(182) Q. On the same day? A. I do not recollect if I saw them on the same day. I believe I did see them on the day before.

Q. Will you swear that you saw them two or three days before the fire? A. I do not know that I am called upon to swear on the matter.

Q. Do you mean to say that in your judgment you be-

lieve that you saw these draft stubs the day before the fire, or are you merely guessing for the benefit of the Commission? A. It is my opinion that I saw them.

Q. On what do you base that opinion? A. On my recollection.

Q. You recollect handling all these stubs the day before the fire? A. I recollect seeing the book of stubs the day before the fire. On my recollection, yes.

Q. On the same day? A. No.

Q. Why not? A. Because I was excited and did not look.

Q. When did the fire take place? A. Nine a. m.

Q. You have heard it mentioned, in the course of this hearing, that persons hostile to the Company may have burned the offices down? A. I have.

Q. You know, then, whether any person would have the motive to steal the books or destroy them immediately before the fire? A. I know nothing at all about it.

Q. No information of the kind? A. None.

Q. Have you knowledge at all that any person hostile to the Company set fire to the building? A. I have no such knowledge.

Q. Yesterday, Mr. Blum, you stated that three routes had been surveyed for the Cauca Company? A. I stated in detail the number of routes surveyed.

Q. Did you say three, or more or less?

(183) A discussion then ensued on what surveys had actually been made, and Mr. Blum stated that he had separated the surveys in his examination of yesterday because they had been made by different parties; but, as a matter of fact, only two routes had been surveyed—viz., by Cresta de Gallo and Las Nieves.

CROSS EXAMINATION CONTINUED:

Q. Did you accompany the surveying parties? A. I did not.

Q. In any instance? A. No.

Q. How did you know the survey was made? A. I had to send them supplies, money, animals and materials.

Q. Have you any personal knowledge of your own when you say that these lines were actually surveyed? A. I have not seen the line surveyed.

Q. Then your information is derived from hearsay? A. It is derived from the engineers.

This answer was stricken out by the chair at the request of the counsel for the Government.

Q. Did you see it yourself or do you only know what people told you about it? A. I know what the employees told me—not the people.

Q. Well, to be precise, then what you have heard from others; is it not so? A. Yes.

Q. Now, have you personal knowledge of how much the Cauca Company received from the Government, either by *libranzas* from the Custom House or in any other way? A. Yes.

Q. Kindly state the different amounts received by the Company from the Government and then divide them if (184) you can into sums received in the payment of the $50,000 deposit, and on account of interest on the so-called guarantee? A. I cannot tell the exact amount in Colombian currency as regards the $50,000.

Q. Speak of it in gold? A. I do not remember the figures in gold. I will tell you the currency.

Q. State it, then, in Colombian currency? A. Well, the amount was about $103,000 in Colombian currency.

Q. How much on account of interest and how much principal? A. Six thousand dollars currency on account of interest.

Q. What was the rate of exchange? A. It was something like 97 per cent.

Q. At what date was this payment made? A. In April, 1892.

Q. You are confident that it was made about April, 1892? A. Yes.

Q. You have no doubt as to the correctness of the amounts which you have given us, excepting as regards the fractions? A. Yes.

Q. Are you quite satisfied that the exchange was about 97 per cent.? A. More or less.

Q. What do you mean by more or less? A. It may have been between 96 and 100 per cent.

Q. Now, will you state what the Company received from the Government on account of the interest upon the guarantee? A. Shall I recite the total amount?

Q. Yes. A. The total amount from interest upon the guarantee was about $327,000, Colombian currency.

Q. Between what dates was that amount received? A. Between October, 1893, and January, 1896.

Q. Do you know in how many payments this amount was paid?

(185) Mr. Stine objected to the cross examination on any special point which he had not brought in, and he failed to see what the company might have received from the Gov-

ernment had to do with the case. The chair stated as his opinion that, although the cross examination was not strictly in order, they desired the greatest possible light on all points, and he ruled that the chair would admit the evidence.

Q. (Question repeated.) A. From memory, I should say in about four or five payments.

Q. State to the commission the dates and amounts of these four or five payments. A. I remember the first payment was made about October, 1893. It was about $120,000.

Q. What was the rate of exchange? A. About 125 per cent. to 135 per cent.

Q. About when was the next payment made; what was the amount, and what was the rate of exchange? A. I could not give you the date of the next payment. It is not quite clear to my mind.

Q. As near as you can? A. As far as I can recollect, about the latter part of 1894. I believe the amount was $108,000 Colombian currency. The rate of exchange was 156 per cent., if I recollect.

Q. The third payment—when it was made, and what was the rate of exchange? A. I am at a loss as to the date.

Mr. Stine said at this point, in order to save time, the amounts and dates of payment were set forth in his opening address. Mr. Robertson stated that he required the evidence from the witness. Mr. Blum proceeded to read the amounts from Mr. Stine's address as follows:

(186)

1st payment,	November 26th, 1893	.....	$122,782 50
2d "	August, 1895	.....	108,877 50
3d "	October 22d, 1895	.....	48,120 86
4th "	June 23d, 1896	.....	77,121 00

Q. After refreshing your memory, do you desire to change your testimony in any respect in regard to the rates of exchange at the time of payment? A. The exchange I have given is about correct. I do not recollect and difference.

Q. Did you at any time buy bills of exchange on New York? A. I did.

Q. With the funds of the Company? A. Yes.

Q. Do you remember when you commenced and how long you continued and to what extent? A. Yes.

Q. Please give us the details? A. Well, I commenced buying bills of exchange in the middle of the year 1895.

Q. You bought none before? A. I cannot say positively. I may have bought some.

Q. To what extent? A. I cannot remember the amount for each little period. I may remember the total amount of drafts.

Mr. Stine here stated that the witness had testified yesterday as to the bills that had been drawn by him on New York. He wanted to make it clear that this examination was not referring to that matter.

Mr. Robertson said he was not referring to those bills drawn, but to those purchased. He would make this quite clear.

CROSS EXAMINATION CONTINUED.

Q. Please say about how much value of drafts were purchased by you prior to the middle of 1895? A. Up to (187) that time my purchases did not exceed $7,000 to $8,000 gold. Of course, I may be mistaken.

Q. I am asking to your best recollection; you may have purchased more. A. More, or perhaps less.

Q. So, as a matter of fact, it is just likely that you purchased more rather than less? A. Possibly.

Q. State the gross amount of drafts on New York that you purchased with the Company's funds prior and after the year 1895? A. You are asking me a rather difficult question. How can I remember which drafts were drawn on New York?

Q. You said just now you could give me the gross amount? A. I meant New York or anywhere else. Some are on London.

Q. That makes no difference I will put the question more plainly. Can you state the number of drafts that you bought with the Company's money in and after the year 1895 for the purpose of sending money out of the country? A. I should think that the amount would be, say, approximately $120,000 American gold.

Q. From what source did you receive the money for purchasing these drafts? A. All from amounts which I could dispose of not necessary for running expenses of the road. Or from *libranzas* or other proceeds.

Q. You say moneys that the Company did not need at the time? A. Exactly.

Q. What became of these moneys after you purchased the drafts and sent them away? A. I sent the drafts to the president of the company. I do not know what he did with the proceeds.

Q. Can you state in a general way how frequently you

may have made these purchases of drafts? A. It depended
(188) upon circumstances. I had no regular way about purchasing. There was no regularity about it.

Q. I am asking you whether you can state in a general way about how frequently you made such purchases. Can you answer, yes or no? A. I cannot.

Q. Can you state approximately the largest amount you may have invested at any one time in such drafts? A. Yes.

Q. State that? A. The largest amount may have been about $18,000 or $25,000, Colombian currency.

Q. Do you remember the dates of any purchases of about that extent? A. I do not.

Q. Not even approximately? A. I could not say the dates.

Q. When you say that you purchased drafts to the extent of $120,000, American gold, do you mean that was the extent *in toto* of all drafts that you did purchase in South America to send out of the country? A. It may be $10,000 more. I have no absolute recollection.

Q. I mean particularly to call your attention that I include everything purchased in South America? A. I include in my answer all drafts purchased, say, in Buenaventura, Medellin, Bogota, Panama, etc.

Q. Do you know approximately what were the gross receipts of the Company from its operation while you were connected with it? A. Approximately I can figure. I cannot guarantee without going over the books.

Q. Can you remember about the amount? A. I could figure about the amount.

Q. Please state it? A. I think the amount would represent something about $270,000 or $280,000, Colombian currency, for the total proceeds.

Q. Do you mean for the total period of your connection with the road, or do you mean to include all the receipts of the Company from other sources than the opera-
(189) tion of the road during the time the Company had the concession? A. I mean to include the total amount of its receipts during the time of the concession. These receipts are gross.

Q. Does this total you have just given include the moneys received from freight and general traffic over the road during the months of November and December, 1890? We are told that it received those receipts, although the Goverment had possession of the road at that time. A. I do not know.

Mr. Robertson then said he would close his cross-ex-

amination on the understanding that while Mr. Blum was in the city he would be at liberty to call upon him again. Mr. Blum said that he was leaving shortly, but that he would be back again in ten days; but if there was anything of importance he would delay his departure, and said that he was at the disposal of the Commission.

Mr. Stine then proceeded to put a few more questions to the witnes; as follows:

Q. During the course of this cross-examination you were asked whether you knew these surveys had been made or whether you only knew on hearsay whether they had been made or not. Will you please state whether or not the chiefs of the surveying parties made official reports to the office of the Company in Buenaventura on the subject of their work while in the field? A. I know it for a fact that they did make such reports.

Q. Did they forward to the Company's office details in the shape shape of drawings, profiles, calculations, etc.? A. They did.

Q. Did they sign the same? A. They did.

Q. Did you see them? A. I did.

(190) Q. Did you speak to them personally as to the work? A. I have done so.

Q. Were these surveys handed to the Colombian government? A. They were.

Q. By you? A. Myself.

Q. And accepted? A. They were receipted for.

Q. You have made various statements as to payments made in the *libranzas*, and have given dates of such payments. Now, were these the dates on which these payments should have been made, or the dates on which they were made? A. The dates when they were made.

Q. You are positive? A. Quite.

Q. Was there any loss on these *libranzas*?

This question was objected to by the Counsel for the Government, and after some discussion the chairman said: "That the Commission should have all information on the subject and be in a position to digest it afterwards."

Mr. Robertson, on behalf of the Government, said: "We except to the ruling permitting the submission of proof as to the amount of loss on the *libranzas*."

EXAMINATION CONTINUED.

Q. (Question repeated) A. There was.

Q. Can you state the sum, more or less? A. Approximately, about $15,000 Colombian currency.

Q. You state that the gross receipts of the railway, from the receipts, I suppose from the freight and passenger traffic, amounted in the aggregate to about $270,000 Colombian currency. Will you please state the operating ex-
(191) penses during that period? A. I assume that the operating expenses were about $320,000 Colombian currency.

Q. In other words they were in excess of the earnings about $50,000 Colombian currency? A. Yes.

Q. Will you please state from what sources you derived $120,000 for the purposes of drafts? A. From the *libranzas* and the funds derived therefrom.

Q. In other words, from the moneys handed you by the Government? A. Exactly.

Mr. STINE: That is all.

CROSS EXAMINATION CONTINUED BY MR. ROBERTSON.

Q. You say that the Company lost $15,000 Colombian currency on the *libranzas*. Was that lost simply because payment had been deferred? A. No.

Q. Did the loss result in any way from the failure of the Government to pay when it should have paid? A. No.

Q. Other reasons then? A. Yes.

Q. It is not the trouble in this case, then, that the Government should have paid and did not pay? A. You are right. I mean that they were not directly paid by the Custom House, and they had to be sold to the trade at a discount.

Q. Was there an agreement that the Custom House should redeem its own *libranzas*? A. Yes.

Q. Was it in the written agreement? A. Yes.

Q. Do you know whether or not there was any agreement with the Custom House? A. I do.

Q. Was this agreement contained in the contract? A Yes, in the concession.

Q. You swear to that? A. I do.

(192) Q. Then the Secretary or the Treasurer was to deliver them to the Custom House, and they were to be paid over in cash by the Custom House? *Q.* Yes.

Q. You swear that was in the contract? A. I do.

Q. And the only loss that was sustained was because the *libranzas* were not negotiable among the merchants? A. That is not the only loss.

Q. Was not that the cause of the loss of the $15,000? A. Yes.

Q. Have you any knowledge that the Custom House would not have taken these *libranzas* at some later period

if they had not been negotiated? A. I do. I have that knowledge.

Q. Then you were able to look into the future knowledge of the Custom House? Very well, that is all.

EXAMINATION CONTINUED BY MR. STINE.

Q. On what do you base your knowledge? A. My knowledge is based on the absolute refusal of the Custom House officials to redeem these *libranzas*.

Q. What do you mean by "further loss"? A. There was some loss due to the delay in payment.

Q. Please express the same. A. I could not give the figures to the Commission on that loss.

Q. Explain, then, what you mean. A. The loss was due to exchange. Exchange fluctuated between the time when the payment should have been made and when the payment was made.

Q. You do not know how much this loss was? A. No.

Q. You could not figure it? A. I should require the data.

(193) Q. Did the Company actually go directly with these *libranzas* to the Custom House officials themselves, and did they refuse payment? A. They did. Payment was refused.

MR. ROBERTSON: Q. Did the Government have any communication with this Company on this subject? Were there any oral communications passed between you and the representative of the Government on the subject? A. The Government being in Bogota, I could not have oral communication with it.

Q. Excuse me, I said the representative of the Government? A. With the representative, yes.

Q. Who was the representative? A. Mr. Victor Mallarino, attorney for the Company. He was the Company's representative.

Q. I mean, did you have any oral communications with the representative of the Government? A. Yes; the Administrator of the Custom House.

Q. What was it? A. It was to the effect that I requested him to receive the *libranzas* for the 50 per cent. of the proceeds of the Custom House, and he declared that they would only be received for 50 per cent. of the duties which were paid by the people who had to pay duties.

Mr. Stine then said he would not prosecute this line of inquiry at present.

CROSS-EXAMINATION CONTINUED BY MR. ROBERTSON.

Q. Did you mean to state that the dispute between yourself and the Administrator of the Custom House was whether the *libranzas* would be paid by the application of 50 per cent. of the receipts of the Custom House, or by the application of 50 per cent. of the duties actually paid into the Custom House? A. That is not what I said.

Q. Please explain what you did state? A. I stated (194) that the Administrator received these *libranzas* only as part of the payments to the Custom House. He did not redeem them.

Q. You stated in your testimony that the receipts of the line amounted to a certain sum during the time of your connection with the Company. Please state what that time was? A. I began on the 30th October, 1891, and I lasted to the 27th of January, 1897, with the railway.

Q. You are still in the employ of the Company? A. Yes.

Q. Does that period cover the period of the concession? A. No.

Q. When did the cocession commence? A. On the 27th of August, 1890.

Mr. Robertson having concluded, the chairman proceeded to put a few questions to the witness.

Q. Now, Mr. Blum, you stated that there was some change in the superstructure, and the track was relaid. Please tell us when that took place? A. It took place during the term of years the Company was over there.

Q. In the course of ordinary repairs? A. With the exception of relaying the ties and rails, which was done to a large extent, and could hardly be called ordinary maintenance.

Q. What was the weight of the new rails? A. 40 pounds.

Q. And the old rails? A. 25 or 28 pounds.

Q. Did you weigh the rails yourself, or did you merely hear this? A. We weighed an old rail taken from the track.

Q. This of course was worn? A. Yes.

Q. What was the gauge of the road? A Three feet.

(195) Q. What was the price of rails at the time? A. I do not know.

Q. What became of the old material? A. It is alongside of the track.

Q. It was not used for any purpose? A. No.

Q. Is any credit allowed for it? A. It is not mentioned in the inventory.

Q. How do you explain the great discrepancy between the receipts and the expenses of the road? A. By the fact that during the first years the traffic was very small, and at the time considerable competition was made against the railway by canoes.

Q. Were the operating expenses unusually heavy? A. Not for that part of the country.

It being 4 P. M., the Commission then adjourned, upon a motion duly seconded, until Thursday, June 10th, at 10 A. M., this being the only date when the attorneys were not preoccupied.

(Signed) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Seventh Session.

(196) Held at 30 Broad Street, New York City, on Thursday, the 10th day of June, 1897, at 10 A. M.

Mr. Pena's opinion on Chairman's ruling—Mr. Sidney C. Schramme called and sworn on behalf of the company—Mr. Christian F. Schramme called and sworn on behalf of the company.

Present: Commissioners, attorneys, and counsel as before.

In view of the difficulty of correctly reporting the proceedings and the length of the same, it was decided that the secretary should send copies to the members of the Commission in order that they might make their corrections. From these the secretary is to prepare a final amended copy, to be submitted to the chairman, and if approved by him to be copied in the minute book.

Mr. Manuel H. Pena, the Commissioner for the Government of Colombia, handed in his view in regard to the ruling of the chairman on the interpretation of the Convention as follows, and it was received and placed on file:

"Referring to the opinion delivered by the distinguished chairman as regards the interpretation of the indemnity which the Government of Columbia is to pay to the Cauca Company in consideration for the return of the Cauca Railway to the Government, I have to offer a few remarks.

"Hitherto, we have only heard the claims of the company against the Government, and not those of the Government against the company, inasmuch as the time has not yet arrived when the representative for Colombia (197) should introduce the same. We cannot doubt the existence of such claims in the face of the following indisputable facts—viz.: That the company called the Cauca Company undertook by contract dated 1890 to construct a railroad from Cordova to Manizales, a distance of about 200 miles; that the first section thereof from Cordova to Cali, about 100 miles, was to be finished within four years dating from January, 1891; that in January, 1897, six years after the commencement of the work, only 10 kilometers had been completed by the company, which 10 kilometers the Government had given them partly finished and the other part in an advanced state of construction, and which required in all but a small expenditure to put them into serviceable condition; and in addition six and a half kilometers of new work on which there had also been some work done prior to the receipt of the line by the company—that il to say, in six years the company repaired 10 kilometers and built six and a half kilometers. Something must undoubtedly have affected the company when its work only resulted in such a limited amount of construction. It is difficult to understand why the company did not carry out its obligations, holding as it did such a liberal and generous condition. This is the more striking when we see that the Government did not have to provide the money for the construction; that the Government guaranteed the capital the Cauca Company might invest by means of a liberal interest; and, when we consider that the Government was actually bound to pay this interest under penalty of a higher additional interest, if in default, one might imagine it to be almost to the advantage of the company that the payment should not be made punctually on account of the high interest accruing thereon. The Governments of the Republic and of the Department looked upon this enterprise as of the utmost importance for the Cauca people, and when the news arrived that a contract had been made with a wealthy high-standing company it was received with rejoicings, and Mr. Cherry be-
(198) came the recipient of continuous ovations.

"Three years passed away, and and at the beginning of 1894 this good feeling had already changed. There must have been a serious motive for that change of feeling, inasmuch as the Cauca people having such a vital interest in the completion of the road, it is not reasonable to suppose that they would change their sentiments without cause. This revulsion of feeling appears to have risen from the slow manner in which the work was being carried on, inasmuch as only one year had to elapse before the railway should have been delivered, and only six and a half kilometers had been built out of the 160 stipulated in the contract. The Government of Colombia, generous with the Company to a fault, granted two years extention of time; but not only did the work not advance, but the company considerably diminished the rate of progress and practically did not lay a single rail. Thereupon, as the company was making no progress at all, the want of confidence as regards the carrying out of the contract culminated in uncertainty. Whatever the motive may have been, we are not in a position to state, but the Cauca people put it down to the inability on the part of the company to raise the necessary funds to carry on the work. The feelings of the people can be imagined when, after believing in their future prosperity through the railway, they realized that the Cauca Company did not intend to build it. Probably in any other country there would have been cause for hostile and threatening demonstrations. The hostility shown there was limited to talk and comments in the press. The burning of a building belonging to the company, which contained the company's records, and should have been returned to the Government, cannot be attributed to any criminal act, and if there was a crime it would be necessary to ascertain who benefited thereby.

"Be that as it may, the company could not continue long in that position, nor could the Government consent (199) longer to the delay in building the road. Hence the convention of the fourth January, by reason of which we are now convened.

"As may be readily seen, this convention was a compromise of the differences between the contending parties, and in that compromise up to the last the Government behaved generously. Under this convention the Government was to receive back what it had given to the Company as detailed above, and the six and a half kilometers of new constructed line. The Government on its part agreed to pay to the Company everything that they might have spent on the construction and equipment of the railway, and it was agreed by special articles that the Government would

only pay such legitimate and necessary expenditure made on a work, which was to be valued and inspected in order to ascertain that such expenses as set down by the Company are really represented by existing work done.

"We must abide by the literal, strict and conscientious spirit of the convention. In my capacity as Commissioner for the Government I am of opinion that this Commission should not take into consideration such sums that are not directly invested in the railroad, nor such sums that may be the outcome of the financial operations of the Company, nor bonuses paid to any of the shareholders, whatever may be the name applied to such bonuses, nor loses of any kind incurred by the Company, hypothetical or otherwise; nor should the Commission approve of unnecessary salaries; those that are admitted should be carefully appraised; in view of which I respectfully submit that:

"I am unable to coincide with the learned chairman in the construction of the ruling for the convention of 4th January last, and, therefore, respectfully submit that in accordance with the said convention the Cauca Company shall not be allowed to prove or receive indemnity for any items of expenditure not connected with the surveying, laying out, construction and the equipment of the Cauca Railway, and I respectfully submit this addition to the last paragraph of the learned chairman for approval."

(200) This opinion was read, received and placed on file.

The chairman then said that the business before the Commission was the continuation of testimony on the part of the Cauca Company.

Mr. SIDNEY C. SCHRAMME was then called by Mr. Stine, and the usual oath having been administered by the chairman, his examination proceeded as follows:

Mr. Robertson stated that they acceded to the examination of this witness on the understanding that the Government retained the right to again call Mr. Blum up for cross-examination, as they had not finished with him yet. Mr. Stine said they would not place any difficulties in the way of calling witnesses; they would accommodate each other in this respect. He would ascertain when Mr. Blum would be again available, because they also wished to re-examine him.

Q. Now, Mr. Schramme, what is your name? A. Sidney C. Schramme.

Q. What was your occupation in 1890? A. Do you mean December, 1890?

Q. Yes, in December of 1890? A. I was treasurer of the Cauca Company in Buenaventura.

Q. At that time did you have charge of all moneys and accounts of the company? A. I did.

Q. At Buenaventura? A. Yes, sir.

Q. By whom were the disbursements made? A. By me.

Q. And by whom were the entries made for the same? A. By myself.

Q. From December, 1890, to what date? A. Somewhere round the end of September, 1891.

Q. Please look at this book, Exhibit No. 2, and state if you have ever seen it before. A. Yes, I have seen it. In the office here.

(201) Q. Also Exhibit No. 3? A. Likewise.

Q. And Exhibit No. 1? A. Yes.

Q. Please state what these books are. A. They were sent to the Company as copies of the books at Buenaventura made by Mr. Blum.

Q. Are you frmiliar with Mr. Blum's handwriting? A. Yes, sir.

Q. Have you seen him write often? A. Very often.

Q. Are these books in Mr. Blum's handwriting? A. Yes.

Q. You have heard Mr. Blum's testimony at the last meeting? A. I did.

Q. You heard him state that the entries in those books of the Cauca Company to October, '91, were in your handwriting. A. That is a fact.

Q. Were these books kept by you? A. They were.

Q. From the time the books were opened up to October, 189!? A. Up to the time I left.

Q. Please state whether or not the entries which appear in Exhibit No. 1, at page 6, beginning 1891—cash—January, 31—$2,000, and in the next column $3,920, down to and including the entry of September 30, 1891, entries on pages 12 and 13—$6,520—and in the next column $12,148, were entries made in the Ledger kept in Buenaventura by you.

Mr. ROBERTSON: I object to that question. I would like to ask the witness whether he knows of his own knowledge that these are copies of such books. Mr. STINE: Very well; I do not object.

Mr. ROBERTSON: Q. Now, with respect to the entries which have just been called to your attention, have you ever compared these entries with the original entries from (202) which they purport to be copies? A. I have not.

Q. Have you, aside from looking at these copies of entries, any independent recollection to enable you to state that these are acturate copies from the original entries made by yourself? A. I have drawn drafts for some of the items. I have seen the original drafts here. I could remember some.

Q. That is not my question. As you sit here have you any recollection, independently of these copies, which enables you to state that these copies are absolutely accurate copies from the original accounts? A. No; I cannot say that.

Q. That being the case, Mr. Chairman, it seems to me that the witness ought not to go into these items, because he is not in the position that Mr. Blum was. Blum had made these entries himself, and knew the copies here to be accurate copies from the original account, and in that sense the evidence was far superior. I understood from Mr. Blum that it had been the habit of the Buenaventura office to send monthly statements of the items. If our friends could produce these monthly statements, we should have the items ourselves before us, and not somebody else's views thereon.

Mr. STINE: We will produce the statements. We will produce the original proof from the monthly statements as to these items. I ask that the witness be allowed to testify as to these books, and that, assuming that the amounts correspond in the two statements, that the books shall be taken by this Commission as having been put in evidence. I mean that the proofs be considered, provided that the monthly statements agree with the amounts put in the ledger.

Mr. ROBERTSON: This account is not evidence under the testimony of Mr. Blum. The idea is to strengthen the (203) testimony by a witness who does not know it is an accurate copy.

Mr. STINE: Mr. Blum stated that he knew nothing of the accuracy of the entries prior to October, '91. I want to show that they were made from the day-book and ledger. I wish, in order to save time, that the Commission will allow me to proceed with this witness.

Mr. ROBERTSON: The evidence is objected to on the ground that the witness is not testifying on independent recollection or knowledge as to whether or not the items to which his attention has been called are actually copies from the original entries in the Ledger.

With the consent of the chairman, Mr. Stine then repeated the question objected to.

A. I think they are. They are to the best of my knowledge.

Q. Look and see. A. I am not clear as to the date I left in September. If he copied them they are the correct items.

Q. But please look to the entries and make sure. A. I am pretty sure that they are quite correct, according to my memory.

Q. Please look and state which of the entries in this account which has been shown to you are of your recollection true copies of the entries made by yourielf in the original Ledger? A. You mean to the best of my recollection?

Q. Of course, I mean to the best of your recollection. I am not speaking of anybody else's recollection. A. Down to and including this $1,309, August 31, 1891, they are the exact figures, according to my memory.

Q. Please take the other books; take the Cash book first. What book is that? A. The Cash book of the Colombian Construction Co.

Q. What book is this? A. Journal of the same Company.

(204) Mr. ROBERTSON: Q. Originals or copies? A. Originals.

Mr. STINE: Q. And this? A. Ledger of the same Company.

Mr. Stine then offered them in evidence, and asked to have them marked for identification.

Mr. Robertson proceeded to cross-examine the witness:

Q. Do you mean that these are the original Cash book, Journal and Ledger of the Cauca Company? A. Of the Colombian Construction and Improvement Company. That is, I did not make the first entries. To the best of my knowledge, they are the originals books of account.

Q. Are you able to say so positively? A. I did not start them: I cannot say positively whether they are. From what I have seen, they are the original books.

Q. From what you have heard say? A. Yes.

Q. Do you know who started them? A. Mr. Robert R. Bower.

Q. Do you know where he is? A. He is in the State's prison.

Q. How long has he been there? A. I believe two or three years.

Q. When did he start these books? A. In December, 1890.

Mr. Stine here stated that he thought time would be saved by putting Mr. Schramme, senior, in the box. Mr. C. F. Schramme was therefore called, and the chairman administered the usual oath.

EXAMINATION BY MR. STINE.

(205) Q. What is your name? A. Christian F. Schramme.

Q. What has been your occupation since 1890? A. I have been secretary and treasurer of the Colombian Construction and Improvement Company.

Q. During that time were the books of the Company in your charge and under your control? A. They were.

Mr. Robertson here raised the point as to whether it was proper for one of the judges of the Commission to act as a witness. He was under the impression that it was not; but he raised no objection if the Commission considered it in order.

The chairman replied that it was a very delicate matter, and that under the circumstances the Commission must accept his evidence. It would be necessary to hear from Mr. Schramme later on in any case, and he ruled accordingly.

Mr. ROBERTSON: I do not press the point.

EXAMINATION CONTINUED:

Q. During which months? A. Beginning November, 1890, to the present day, I was secretary and treasurer of the Company.

Q. And a director? A. And a director.

Q. Of the Colombian Construction and Improvement Company? A. Yes.

Q. Will you state whether or not the Colombrian Construction and Improvement Company was a company incorporated simultaneously with the Cauca Company? A. Both companies were incorporated at the same time.

(206) Mr. STINE: I desire to say that at the proper time I will introduce the original papers of the incorporation of the Company.

Q. Please state whether or not the Colombian Construction and Improvement Company was the agent of the Cauca Company. A. They were the agents of the Cauca Company, and both these companies were one and the same almost.

Mr. ROBERTSON: I want to draw out from the witness that these are not the books of account of that Company.

Q. The Colombia Construction and Improvement Company was also incorporated under the laws of West Virginia? A. It was.

Q. With a capital stock of $2,000,000? A. $2,000,000.

Q. Who was the owner of the stock of the Cauca Company? A. The Colombian Construction and Improvement Company.

Q. Was it entirely owned by the Colombian Construction and Improvement Company? A. Entirely.

Q. Were the officers and directors of the Cauca Company also stockholders of the Colombian Construction and Improvement Company? A. They were.

Q. Did the original concession of Mr. Cherry, which is in evidence, I believe—

The CHAIRMAN: Not yet.

The question withdrawn.

Q. Was there a contract made between the Colombian Construction and Improvement Company and the Cauca Company, Mr. Schramme? A. There was a contract made between the Colombian Construction and Improvement Company and Mr. Cherry.

Q. Did the Cauca Company keep any independent books of its own? A. It did not.

(207) Q. Where is the true record of the expenditures of the Cauca Co. to be found? A. In the books of the Colombian Constructian & Improvement Co.

Q. Now please look at this book; first, state what it is? A. It is a Cash book.

Q. What Cash book? A. Of the Colombian Constructian and Improvement Co.

Q. Please look at this book and state what it is. A. That is the Journal of the Colombian Construction & Improvement Co.

Q. And this book? A. That is the Ledger of the Colombian Construction and Improvement Co.

Q. Have these books been under your sole charge and supervision from the date of the first entry up to the present day? A. They have; yes, sir.

Q. During that time did you employ clerks who have written up these books under your direction and charge? A. I did.

Q. Name them. A. R. Bower, and, after that, Mr. Sidney C. Schramme.

Q. Were the entries in the Ledger and Journal entries made under your direction? A. They were.

Q. And at your request? A. Yes.

Q. Are you familiar with the books of account? A. Yes; I am.

Mr. STINE: I offer them in evidence, and I ask them to be marked for identification as exhibits 4, 5, and 6.

The CHAIRMAN: The secretary will please mark them.

(208) Mr. Robertson, on behalf of the Government, objected to this on the ground that the books were not the books of the Company which was a party to this controversy. He held that the expenditure of a Company not a party to the controversy was irrelevant to the inquiry. The Colombian Construction and Improvement Company was a Company organized for the purpose of constructing railways at as large a profit as possible to itself, and he asked that the Cauca Company be not allowed to prove its expenditure by the production of the books of account of an entirely separate corporate body, whose only existence is for the purpose of making a profit.

Mr Stine allowed that both Companies were organized for the purpose of making a profit, but this had nothing to do with the case, for the simple reason that the only profit that could accrue to the Company would be after the road had been completed and there should be a surplus of receipts to cover the cost of construction and operation. The witness has testified that the Colombian Construction & Improvement Co. owned the stock of the Cauca Company; it owned its franchise; it owned everything that the Cauca Company owned. Being in that position, it was practically the same Company. It was a well-established fact that the acts of the agent were binding upon the principal, and that, the books of the agent are part of the evidence and binding upon the psincipal. He took it that what the Commission was after was primarily to get at the truth and the facts, and that while they were all to confine the introduction of evidence within reasonable bounds, at the same time the Commission wanted to hear everything that throws light on the transactions that took place. It would be an absolute impossibility for the Cauca Co. to prove its case if the books and vouchers and (209) everything else that show what expenditure was made were not to be introduced.

Mr. Stine then explained that the only reason that the name of the Cauca Company was kept up was on account of the railway being known by that name for 30 or 40 years, and they did not want to alter the name of the enterprise in Colombia.

CROSS EXAMINED BY MR. ROBERTSON.

Q. Did you hear Mr. Stine state in his argument that the stock of the Cauca Co. was all owned in fact by the Colombian Construction & Improvement Co.? A. That is so.

Q. That is a fact? A. Yes.

Q. When did it become the owner; before these books were opened? A. Yes.

Q. Has it remained the owner ever since? A. Yes.

Q. Of its stock, its concession and of all its rights? A. Yes.

Q. So that the Cauca Company does not own any of the rights in this matter as against the Colombian Construction & Improvement Co. A. It does not.

Mr. Robertson asked that the books should not be admitted in evidence as it had been amply proved that they were not the books of the Cauca Company itself.

In the second place, he pointed out that as the Cauca Company did not own any rights it could not come before the Government and make a claim. It appeared that the Cauca Company did not own the concession. It appeared that the Commission had come to a very important point in the case. At the time the convention was entered into (210) the Cauca Company did not own, and did not now own, one particle of interest in the matter involved in this controversy. He claimed that in a Court of Law the plaintiff would be nonsuited, and the case dismissed on these grounds:

The CHAIRMAN: There are several points involved in this issue upon which the chair will rule. The first point is the identity of these two Companies. It has been testified by witnesses that the Companies are identical, and the charters will be produced in evidence, and hence we must accept that as a fact. Another point is that these books are not properly before us, because they are not the books of the Cauca Company, but those of the Colombia Construction & Improvement Co. It is our duty to ascertain the facts of the case, and, as these facts are presented in the books of the Construction Company, the chair rules that:

For the purpose of this Commission these books must be received in evidence, and any dispute as to any of the items must be settled subsequently.

Exception on the part of the Government.

EXAMINATION CONTINUED BY MR. STINE.

Q. Open the Ledger and state whether or not the va-

rions accounts in the same were in the regular course of business written up and taken from the Journal and the Cash book? A. They were.

Q. Please look at the Journal and Cash book and state whether or not the entries were made on the dates set opposite to them? A. They were.

Q. In the regular course of business? A. Yes.

Q. Were you present when every entry was made? A. I was not.

Q. Did you see them after they were made as a rule? (211) A. When not absent I went over the books every month and corroborated the entries.

Q. Please take the Ledger. Look at the first item, state the date to the Commission? A. November 26, Cash, $8.75, page 150 of the Ledger, under the heading of "Construction."

Q. Now, will you be kind enough to run through the entire list of the items, beginning with the first entry, and state whether or not all the items on that page were taken either from the Cash book or the Journal and posted therein? A. They were.

Q. Will you please state whether or not you have cast up the amount of all the items. I mean on that page? A. I have.

Q. What does it amount to? A. $66,774.44.

Q. Please express in detail what the expenditure was made for? A. The expenditure was for goods purchased.

Q. For whom? A. For the Cauca Railway, and shipped to Buenaventura.

Q. Have you the vouchers? A. I have all the bills and checks.

Q. Will you please produce them?

Mr. Stine then suggested that in order to save time the evidence should be accepted in bulk and the books and vouchers could be gone through afterwards by the chairman.

Mr. Robertson said that brought the Commission to the original point that the books were not of any value at all because they were only values taken from the vouchers which should have been produced in the first place.

The CHAIRMAN: I think the Commission will save time, and arrive at better results, if the books and vouchers are handed over to the Commission for examination by means of experts. I will select one subject to the approval (212) of the Commission. We can then take these papers and go over every item individually. I propose to put in

day and night work on these papers, and verify every item of the account. I shall take the books more as an index to the vouchers.

Mr. ROBERTSON: I make the formal objection to the reception of the vouchers in bulk, and I understand that the experts will go over them. In the process of that inquiry there may come up the question as to whether certain items are fair—

The CHAIRMAN: They will be classified as doubtful items.

Mr. CISNEROS: We do not care what amount has been spent, provided it is proved that it has gone into the construction.

Mr. STINE: We are giving the best evidence.

Mr. CISNEROS: I understand that our work is that you produce your books and your vouchers, and then, having agreed upon these moneys expended in the work according to the books and vouchers, we have to go there and see if the amount of work done really conforms to the money spent.

Mr. STINE: That may be what you understand, but it is not what the Convention calls for, nor what this Commission is called upon to do. We are called upon to give evidence as to the expenditures under various accounts on all legitimate expenses incurred by this Company, whatever they may be. We started with the very best evidence—the books copied from those which were burnt. We have had the witnesses to testify that all these amounts went in a certain way. Now we propose to show that in addition to those sums various things were sent down there. We do not propose to make the evidence more convenient for you than we can help; that is to say, we propose to give all the evidence we can, but we are not going to dis-
(213) cuss the details of construction. We come here to produce the best evidence we can that we made legitimate disbursements of a certain kind. It is for you to say that we have not done it.

Mr. CISNEROS: I understand that the ruling of the Chairman is not so wide. I understand it means to allow the Cauca Company all amounts legitimately and necessarily expended on the works.

CHAIRMAN: This involves the old question as to whether *work* includes everything put into the road.

Mr. STINE: We have put a witness on the stand to show that these moneys were expended in the salaries, laborers, materials and provisions, engineers and so forth, in constructing and building the road. That is all we can prove and all we intend to prove. We have also shown that we have ex-

tended the construction; we have proved that. We are not going into the discussion that somebody else might have constructed it in a different manner. We have proved that we have run trains over our constructed road; we have proved by the same witness that very much money was spent in building the road; we have proved that the Government acknowledged that we did so by paying us certain sums.

Mr. CISNEROS: Say, for instance, that you employed 10,000 laborers. We are engineers—we can easily see if that was so.

Mr. STINE: We are not going to prove the case the way you want it.

Mr. CISNEROS: Are we not to see your pay-rolls?

Mr. STINE: No.

Mr. Cisneros called attention to Art. 5, which says that the work must be appraised.

Mr. STINE: Yes. That means we must appraise under the ruling of the Chairman

(214) Mr. CISNEROS: The Chairman ruled that the words "*obras*" and "*trabajos*" did not take in merely the physical work. Well, we have no objection to that. The Government wants to pay the Company all the money spent on the construction of the work. Nothing else.

Mr. STINE: That is not what the Chairman ruled.

Mr. CISNEROS: Will you kindly point out the difference?

Mr. STINE: I will not argue at all. I think the nature of the evidence admitted shows clearly what the Chairman intended.

THE CHAIRMAN: This discussions seems hardly necessary at the present time.

EXAMINATION OF MR. SCHRAMME BY MR. STINE CONTINUED.

Q. In addition to these construction vouchers, just put in evidence, down to March 31, 1897, what are the subsequent entries? A. They are entries made since April the 3rd.

Mr. STINE: We put our claim in on April the 3rd, but the Chairman stated that all expenses made should be included, so the accounts go down to May the 11th, 1897.

Mr. ROBERTSON: I do not understand that this Commission has ruled that any items subsequent to the convention are to be paid.

EXAMINATION CONTINUED.

Q. Please show what are the other accounts of expenditure? A. The expenditure is all included here.

Q. Of every kind?

Mr. ROBERTSON: Q. You mean to say that everything spent under construction is in that account? A. With the (215) exception of the salary account, which is not yet transferred. It is a charge against the construction not yet carried into the construction account.

Mr. STINE: Q. Have you the vouchers for the salary account? A. Yes, sir. The salary account at page 145 is, of course, a liability.

Mr. CISNEROS: Q. Are all the liabilities in that account? A. No; only the salaries.

Mr. STINE: If you take the claim as originally filed with the members of the Commission and compare it with the construction account, that makes up our claim. In this connection I would suggest, as agreed upon at the last session, that these books be put in charge of the chairman, and that the chairman go over the accounts with Mr. Schramme and Mr. Pena and with the assistance of the gentleman selected by the chairman. After that the chairman to call another meeting of this Commission for the purpose of accepting or disputing any of the items.

Mr. CISNEROS: I think this is contrary to what we agreed just now. I suggested to bring Mr. Blum here again.

CHAIRMAN: By examining the books, we shall know what data we have to act upon.

Mr. ROBERTSON: I understand that the Commission will take up the examination of the books, but that it does not preclude us from examining Mr. Blum or calling witnesses in any way whatsoever. I should like the Commission to take some sort of steps to ascertain when Mr. Blum will be back, as there seems to be some sort of a doubt about the matter.

Mr. STINE: He will be back and he will call at your office.

(216) CHAIRMAN: We would like to have the other evidence; that is, the charter.

Mr. ROBERTSON: If Mr. Stine has really closed his case—

Mr. STINE: I have not. We will put in the charter.

Mr. ROBERTSON: We wish it submitted before it comes in evidence. We want to see the assignment of the Concession.

Mr. STINE: We have all that.

Mr. ROBERTSON: When will you show them?

Mr. STINE: We will send you copies. We have reached a point when the work is put upon the Commission.

Nobody's rights are affected by the adjournment. I have not closed my case, as my honorable friend suggested. I would like to ask quite a number of further questions.

Mr. ROBERTSON: Do you desire an adjournment?

Mr. STINE: For the purpose of going into the proofs we have submitted.

Mr. ROBERTSON: It seems to me that it would be really better to close the examination. If my friend has some reason for the adjournment, that is a point to submit to the Commission.

Mr. STINE: I will not plead business engagements; I ask the adjournment in a friendly way, in the same manner as my friend claimed it the other day.

The CHAIRMAN: As we may not have a meeting for several weeks, it would, perhaps, be better to bring Mr. Schramme's examination to a proper termination at this session.

Mr. ROBERTSON: I have no right to commence my cross-examination until you are through with the direct.

Mr. STINE: I do not want to go into anything but the accounts to-day.

Mr. ROBERTSON: I think the point is material to our side. I really think that Mr. Schramme's examination (217) should be concluded both direct and cross before the Committee takes up the examination of these vouchers. Because the examination and cross-examination may throw some light on these vouchers and the Commission will not be in a position to consider them finally until the examination is completed.

After some further discussion on the adjournment:

The CHAIRMAN: The meeting will adjourn for the examination of the accounts and call a further meeting for the examination of Mr. Blum in the interim.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Eighth Session.

(218) Held at 30 Broad Street on Saturday the 19th day of June, at 10 a. m. till 2:45 p. m.

Mr. Cisneros' suggestions as to examination of accounts—E. Blum recalled for the Company—Cross examination of E. Blum for the Government.

Present—Commissioners, Attorneys and Counsel as before.

The chairman called the meeting to order at 10.10.

Mr. Cisneros then introduced the following paper, which was read by the Secretary:

TO THE CHAIRMAN AND COMMISSIONERS:

Gentlemen,—Most respectfully I beg to call the attention of the Commission with regard to the method adopted for the examination of the books and vouchers of the Cauca Company, which is not, and cannot be, satisfactory to me, inasmuch as it deprives me of the personal and detailed knowledge of the contents of said books and documents, and because, as a matter of fact, without said knowledge, it is impossible for me to protect honestly the interests of the Colombian Government. I understood that the appointment of an expert to report on the books and vouchers was for the benefit of the Commission, independent of my own examination, and since I am aware that this is not the case I have thought it indispensable to call your attention to the subject.

My desire for a personal examination is not intended to reflect against any person. My examination is necessary for pursuing the line of investigation required by my defense. The information required for that purpose can-
(219) not, I am sure, be supplied by any expert not familiar with the case on hand. The ordinary routine of double-entry bookkeeping is one thing, and the science of controlling accounts with the view of arriving at a determined result is another. Different concerns require different classification, and you cannot apply to a railway the same system that you would to a merchant firm or a manufactory.

I do not claim to be an expert in the routine of keeping books, but the scientific part of it is very familiar to me. If I am not permitted to carry on my investigation with the assistance of my own bookkeeper, who will, of course, be paid by me, and with the assistance of my lawyer, during the time the books are in the hands of the expert engaged by the chairman, I shall require at least

three weeks' time for doing so after he returns the books; whereas, if I am permitted to do so at present, it will save considerable time.

Of the 150 days granted by the Convention of the 4th January we have yet 70 days at our disposal, and as the trip to Buenaventura will take 35 days, this leaves only 35 days for our work here. Although I have heard something to the contrary, the trip to Buenaventura is imperative according to the Convention; and, moreover, it is there where the principal witnesses of the Government side can be introduced before the Commission. The defense on the part of the Government cannot be presented before the Commission until after the examination of the witnesses, books and vouchers presented by the Cauca Co. and for all this we have only 35 days.

In order to conciliate all interests, I beg respectfully to submit to the Commission the following plan, which I believe will give satisfaction to everybody, viz.:

That the Commission take an office large enough to enable the expert appointed by the Commission and myself and assistants to work on the books and vouchers without interfering with each other, the said books and vouchers to be placed in charge of a person appointed by the (220) Cauca Company. In this way we shall save time; and, in all probability, my work will be finished before the report of the expert appointed by the Commission.

Hoping that my views will be agreeable to the Commission, I beg to remain,

Yours truly,

(Signed) F. J. CISNEROS.

The chairman stated that he presumed there would be no objection to this procedure, and Mr. Schramme and Mr. Stine, on behalf of the Cauca Company, agreed thereto. Mr. Schramme placed his offices at the disposal of the Commission for the purpose. The chairman declared this a matter of detail to be arranged hereafter, and the proposal of Mr. Cisneros was declared accepted.

Mr. ROBERTSON: May I ask who Mr. Barney is?

The CHAIRMAN: He has been strongly recommended by a personal friend of my father's as a very competent man. He is Principal of the Hebrew Technical Institute, the accountant of the Albany Day Line Boats, and a skillful bookkeeper. I have written him authorizing the inspection of the books for a fee of $250.

Mr. ROBERTSON: I presume he is not connected in any way with any of the parties to this Commission.

The CHAIRMAN: Certainly not. He will give us his honest opinion on the vouchers and accounts.

Mr. Schramme and Mr. Stine disclaimed any acquaintance with the gentleman.

The chairman then said that the Commission was prepared to receive further testimony.

EDWARD BLUM recalled.

Mr. Stine asked the permission of the chair to address a few more questions to the witness Mr. Blum on the direct before proceeding with the cross-examination, and the same was granted.

Q. Will you please look at this paper and state (221) whether you have ever seen it before? A. Yes, sir; I have seen it before.

Q. What is it? A. It is an account of the expenses incurred by the Colombian Construction and Improvement Company.

Q. And have you compared this account with the vouchers introduced at the last meeting? A. I did.

Q. Comparing the same, have you noticed many items for supplies? A. I have.

Q. Did you compare each one with the vouchers in evidence? A. I did.

Q. Will you please state whether or not the supplies, materials and so forth, mentioned in that account, and which you state were compared with the original vouchers, were received by you, and when and where? A. All these supplies and materials mentioned in this account from the date I arrived at Buenaventura, I know for a fact, were received there.

Q. What was done with the same? A. They were employed on the Construction and reparation of the road.

Q. Entirely? A. Entirely.

Q. Now, you stated during your last examination that certain moneys had been forwarded by you from the receipts, which amounted, I think, to about $120,000, and might have been $130,000. Have you since then refreshed your memory by looking at the figures and accounts on this subject? A. I have not.

Mr. Stine here remarked that, as a matter of fact, Mr. Blum had been in error in making that statement.

Mr. BLUM: I was not in error; I answered your question. The attorney for the Government asked me the amount sent out in drafts, and as he requested a direct

(222) answer I thought myself bound to reply to my best recollection; there was also an amount sent out in gold dust. This question was not asked. I can tell you the total amount.

Mr. ROBERTSON: My impression is that I asked you what was the total amount sent out of the country.

Mr. BLUM: I can tell you the total amount to a few dollars.

Mr. ROBERTSON: Q. What is it? A. The total amount forwarded from Buenaventura is $156,000.

Mr. ROBERTSON: Q. You say from Buenaventura? A. I mean sent from the moneys I have handled from all sources.

Mr. STINE: Q. I wanted to get that matter perfectly straight. Now, outside of these remittances either by means of drafts, in gold dust, or in any other way, what became of all receipts from the railway, from the Government, or from any other source, which came into your hands or into the hands of the Cauca Co.? A. Outside of this money, everything has been spent on the railway.

Q. For construction, reparation of the road, and so forth? A. Yes.

Mr. STINE: This is all I will ask.

The Chairman then intimated that the Government was at liberty to proceed with the cross-examination of Mr. Blum.

CROSS EXAMINATION BY MR. ROBERTSON.

Q. Mr. Blum, I will now hand you certain minutes and financial papers of the Cuca Railway, and ask you to (223) translate from Spanish to English the matter on the outside of the fly leaf of those documents, so that we can identify the documents by your own translation of the Spanish title? A. Certainly. Secretary of Finance: Documents relating to the Cauca Railway, which are sent to Sr. Cisneros from the Colombian Consul in New York.

Mr. ROBERTSON: I ask that these be identified.

The documents were identified by the Secretary as Exhibit No. 1 Defendant.

The CHAIRMAN: I did not understand whether the documents were letters or accounts or what.

Mr. ROBERTSON: It is a brochure of the whole subject matter.

Mr. STINE: May I ask whether the letters are between the Company and the Government or what they are?

Mr. ROBERTSON: Some of them are, and some of them are from the Government officials to others.

Mr. STINE: These are certainly not admissible.

Mr. ROBERTSON: I have not offered them in evidence. We have merely marked the documents for future identification.

CROSS-EXAMINATION CONTINUED.

Q. Mr. Blum, please look at these documents which we have just spoken of, and which have just been identified, and state in whose handwriting the entries on the various pages are; take them one by one?

Mr. Blum then described the documents as follows:

Page.	Mark.
1	44 in my handwriting and signed by Mr. Cherry.
2	45 do. do.
3	1 do. do.
4	2 do.

[224]

5	3 not in my handwriting.
6	11 is, and signed by self as attorney.
7	12 I know nothing about.
8	38 in my handwriting and signed by Mr. Cherry.
9	23 not in my handwriting.
10	25 do.
11	39 do.
12	44 do.
13	51 do.
14	52 do.
15	1 in my handwriting and signed by myself as attorney for Cherry.
16	2 is not in my handwriting.
17	3 in my handwriting and signed by Mr. Cherry.
18	31 in my handwriting and signed by myself as attorney for Cherry,
19	32 is not in my handwriting.
20	33 do.
21	34 in my handwriting and signed by self as attorney.
22	35 do. do.
23	39 not my handwriting.
24	40 do.
25	1 do.
26	2 do.
27	47 do.
28	55 do.
29	56 do.
30	57 do.
31	58 in my hand and signed by self as attorney.
32	59 do. do.

33 81 the figures are in my haud.
35 129 not in my handwriting.
36 130 do.
37 131 do.
38 4 do.
39 5 do.
40 no mark. do.
41 no mark. do.
42 171 do.
43 no mark.

[225]

44 no mark; the figures are in my handwriting. It is unsigned.
45 do. Not in my handwriting.
46 do. do.
47 do. do.
48 do. do.
49 do. do.

Mr. CISNEROS: Thank you.

Mr. ROBERTSON: Be kind enough to take the different pages which consist of statements in your handwriting and signed by you, and state *seriatim* what they are? A. You want those in my handwriting, whether signed by Mr. Cherry or not?

Q. Yes. A. I find that page 1, marked 44, is expenses of the Ferrocarril del Cauca relating to the part of the line which exists between Cordova and Caballete from January, '92, to July, '92.

Q. Was it sent by you to the Government? A. It was sent by me to the representative of the Company in Bogota.

Mr. STINE: Q. Who was the representative of the Government? A. Mr. Victor Mallarino.

Mr. ROBERTSON: Q. When you say the representative of the Company what do you mean? A. I mean the attorney.

Q. Was it sent by you to the Government? A. No.

Q. Is that one of the statements heretofore referred to as having been sent by you to the Government? A. That is what I mean.

Q. Do you know that that statement was ever sent to the Government? A. I presume that it was. It is my impression—

Q. Do you or do you not know? A. I do not.

(226) Q. Have you ever made any other statement or sent to the Government any other statement covering the matter of the dates referred to than this one? A. No.

Q. Please turn to the next page in your handwriting. A. This is page 2, marked 45. This is the account of the receipts of the Ferrocarril del Cauca, relating to the part of the line between Cordova and Caballete for the period January, '92, to July, '92.

Q. Is that one of the statements referred to heretofore as having been sent to the Government? * A. Yes.

Q. Do you know that it reached the Government? A. No.

Q. Have you ever sent to the Government, or to anybody to be forwarded to the Government, any other statement covering the matter or the dates referred to than this one? * A. No.

Mr. STINE: We will admit, if you wish it, that the documents did reach the Government.

MR. ROBERTSON: It is part of our plan to get this information from the witness. Please turn to page 3, what is that?

A. Page 3, marked "1." This is an account of the receipts and expenses corresponding to the part of the line between Cordova and Sucre, from July, '92, to July, '93.

Q. Above question repeated. A. Yes.

Q. Above question repeated. A. No.

Q. Above question repeated. A. Let me understand that last question. Do you mean duplicates?

Q. I do not mean duplicates. I want to get it clearly (227) stated on the records that these are the statements referred to heretofore? A. Well, the next is page 4, marked "2." This is an account for interest and general statement of account with the Government.

Q. Above question repeated. A. Yes.

Q. Do you know whether it reached the Government? A. Yes; I know that it did reach it.

Q. Did you ever make out or send to the Government, or to anybody to be forwarded to the Government, any other statement covering the matter or dates in that account specified? A. Well, if I understand that to mean if I—

Q. I mean to ask whether you included these items in any other statements. I want to bring out this fact. At different periods you made up statements and sent them to the Government; if you made out an account from last January until to-day, you would make it clear and inclusive of everything that was to go into that account? A.

* These three questions were repeated by counsel with regard to the following pages of the documents under examination.

Suppose I sent a statement for the year 1893. If the statement for the year 1892 had not been paid, it would be included in the statement for 1893.

The CHAIRMAN: I understand that the witness has not duplicated any items of the accounts. A. No; I have not.

Mr. ROBERTSON: Q. Turn to the next? A. Page 6, marked "11." This is a statement for the receipts and expenses for part of the line between Cordova and Sucre, from January to July, '93.

Q. Above repeated. A. Yes.

Q. Above repeated. A. I do not.

Q. Above repeated. A. I have not.

(228) Q. The next? A. Page 8, marked "38." This is a statement showing the amortization of the *libranzas* issued in November, 1893.

Q. Is that one of the statements referred to heretofore as having been sent to the Government? A. This is a special statement. It is a statement which refers to a special thing, the amortization of *libranzas*.

Q. But, it is one of the statements heretofore referred to? A. It is.

Q. Do you know whether it reached the Government? A. I do not.

Q. Have you sent * * * (above repeated)? A. No; I have not.

Mr. CISNEROS: Q. What kind of *libranzas* were they? A. They were for interest.

Mr. ROBERTSON: Q. Please turn to the next page? A. Page 15, marked "1." An account of receipts and expenditure corresponding to the part of the road constructed between Cordova and San Jose, from July 1, '94, to January 1, '95.

Q. Above repeated. A. Yes.

Q. Above repeated. A. I do not.

Q. Above repeated. A. I have not.

Q. Next? A. Page 17, marked 3. Is an account that I made out for interest, dated December 31, 1894.

Q. What interest do you mean? A. Interest paid by the Colombian Government to the Cauca Co.

(229) A. Above repeated. A. It is.

Q. Above repeated. A. Yes, I do.

Q. Above repeated. A. No.

Q. Next? A. Page 11, marked 31. A statement of receipts and expenditure corresponding to the part of the line existing between Cordova and San Jose, from January to July, '95.

Q. Above repeated. A. It is.

Q. Above repeated. A. I do not.

Q. Above repeated. A. I have not.

Q. Next? A. Page 21, marked 34. This is a statement presented by the Cauca Company to the Government of Colombia for interest to the date of July 1, '95.

Q. Above repeated. A. Yes.

Q. Above repeated. A. Yes.

Q. Above repeated. A. I have not.

Q. Next? A. Page 22, marked 35. This is a statement sent to show the progress of the amortization of the *libranzas*.

Q. Above repeated. A. It is.

Q. Above repeated. A. I do not.

Q. Above repeated. A. No.

Q. Next? A. Page 31, marked 58. This is a statement presented by the Cauca Co. to the Colombian Government for interest to the date of July 1, '96.

(230) Q. What interest? A. Interest on the subsidy granted by the Government.

Q. Above repeated. A. Yes.

Q. Above repeated. A. I do not.

Q. Above repeated. I have not.

Q. Next? A. Page 32, marked 59. Is a special statement showing the amortization of the *libranzas* issued by the Government in payment of interest.

Q. What interest? A. Interest on the railway construction. On account of the guarantee.

Q. Above repeated. A. Yes.

Q. Above repeated. A. I do not.

Q. Above repeated. A. I have not.

Q. Please turn to the next? A. Page 33, marked 81. A part of this page relates to the entries and expenses of the Ferrocarril del Cauca. It refers to the expenses of January 1st to July 1st, 1896.

Q. That is not signed at all? A. It is not.

Q. But in your handwriting? A. Yes.

Q. Above repeated. A. It is.

Q. Above repeated. A. I do not.

Q. Above repeated. A. Never.

Q. Next? A. Page 40, marked "no mark." It is a statement of receipts and expenditure for the part of the line added between Cordova and San Jose, July 1, '95, to (231) January 1, '96, the latter two lines not in my handwriting.

Q. Above repeated. A. It is.

Q. Above repeated. A. I do not.

Q. Above repeated. A. I have not.

Mr. Stine pointed out that in this part of the cross ex-

amination, the witness must be considered as a witness for the Government and not for the Cauca Co. The questions put constituted a clear direct examination and not a cross examination.

Mr. Robertson claimed the contrary. The witness for the Cauca Co. (Mr. Blum) had mentioned in the direct that he had sent half-yearly accounts to the Government and the Government was entitled to cross examine on the smallest detail in that respect.

Mr. STINE: We will not argue.

CROSS EXAMINATION CONTINUED.

Q. I observe, Mr. Blum, that amongst the statements or reports which you have just been testifying about there seems to be no report of the receipts and expenditures of the Cauca Co. from January 1st, '91, to December 1st, '91. Do you know anything about the receipts and expenditure of the Company for that period? A. Well, I know about the expenditure from the comparison of the books and documents for the first part of the year.

Q. Do you know whether there were any reports sent to the Government of Colombia with respect to the expenditures and receipts during that period? A. I know nothing about it.

Q. So that the only information you have on the subject is what you have derived from the inspection of the Company's books? A. Yes. That is, for the part of the (232) time I was not there.

Q. I find that there seems to be no report amongst these reports of receipts and expenditures of the Company from July, '93, to December, '93; do you know whether you made out a report for that period? A. If I look at it I would know.

Q. The question repeated. A. I do.

Q. Do you know what became of it? A. I know it was sent to the attorney of the Company.

Q. Have you any recollection of the details of that report? A. No.

Q. Have you any means of ascertaining the details of that report? A. No.

Q. Are there no books or vouchers to which you could refer in order to get at the items of that report? A. No.

Mr. STINE: Q. Why not? A. On account of their being burnt.

Mr. ROBERTSON: Q. Were there no statements sent from Buenaventura or elsewhere in South America to New York from which the items that went into that statement

could be ascertained? A. The statements were sent to Mr. Cherry.

Q. Were these documents duplicates of those sent to Mr. Cherry? A. They were.

Q. That is to say, that in each case you sent to Mr. Cherry a duplicate of the reports sent to the Colombian Government? A. Yes.

Q. Did you send them directly to Mr. Cherry, to the (233) Cauca Company or to the Colombian Construction and Improvement Co.? A. Directly to Mr. Cherry.

Q. Addressed where? A. Wherever he was located.

Q. Do you remember where he was located at this time? A. Sometimes in Bogota, sometimes in Detroit, sometimes in New York.

Q. Did you address him individually or in an official capacity? A. In an official capacity. As president of the railway Co., that is the way I always knew him.

Q. Was he president of the Colombian Construction & Improvement Co. as well as of the Cauca Co.? A. I do not know anything about it.

Q. You do know that he was president of the Cauca Co.? A. I addressed him as manager.

Q. Do you know whether he was or not actually president of the company? A. I do not know.

Q. I find amongst these reports which we have just been examining no reports for the period from January 1st, 1894, to July 1st, 1894, do you know whether you prepared a report for that period? A. I do.

Q. Do you know whether it reached the Government? I have reason to think so.

Q. You do not know? A. I do not know.

Q. Have you no recollection as to the contents of that report? A. I have not.

A. Is there no means by which you could refresh your memory or reproduce your report for the benefit of the Commission? A. There is not.

Q. Why not? A. Because the papers were destroyed by fire.

Q. Did you send a duplicate or duplicates for the first (234) six months to any person or persons, and, if so, to whom? A. Very probably to Mr. Cherry. I could not say positively. If I was there I should have sent it.

Q. You intended that, as manager or president, he should receive a duplicate?

After some discussion between counsel as to the title of Mr. Cherry, caused by the last question from counsel, the chairman said that he assumed the witness sent reports

to the Company, and under the present examination the title, whether correct or not, made no difference. Mr. Robertson said he thought the error quite natural in view of the close identity of the two companies, and that he had no intention whatever of catching the witness on any question as to Mr. Cherry's title. Question repeated.

A. Yes.

Q. I observe that we have no report here for the period from July, 1896, to January, 1897. Do you know whether or not a report for that period was made out to be sent to the Government? A. No, none was sent by me

Q. Do you know if any was sent by any other person? A. I do not know.

Q. So a report might have been sent for all you know? A. I do not know.

Q. Have you any means, or do you know of any means, by which you could ascertain whether a report was sent? A. I have not.

Q. Was it your custom during all the periods during which you were making out these various reports to duplicate the reports and sent one part part to the Government of Colombia and one part to the officers of the Company? A. It was my custom to duplicate a part to Mr. Cherry. I mean that I sent to Mr. Cherry a copy of the accounts sent (235) to the Government of Colombia.

Q. Was it your habit to send also a telegram or cable message to the Company or its officers here respecting the forwarding of the accounts? A. No.

Q. How does it come that you prepared no statement to be sent to the Government or to the officers of the Company for the period covering July, '96, to December, '96, inclusive? A. Well, the reason I did not send it was that the statement which had been sent for interest to July, '96, had not been covered, and as the representatives of the Company were at Bogota, I thought they would take the matter in hand there.

Q. In any of these statements which you have just been identifying, do you find any items for expenses or receipts relating to that part of the road which ran, or ought to have run, from Buenaventura to Cordova? A. No, sir.

Q. Do you know whether or not reports or statements of the receipts or expenditures of this last mentioned portion of the road were ever made or sent to the Government? A. No, sir; I know they were not sent.

Q. Do you know why they were not sent? A. Yes; I imagine I know.

Q. Give us your testimony on that point. A. Because

there was no interest to be paid on that part of the road until the road was completed according to the concession, and according to that the Government had no interest in knowing about that section of the road.

Q. That section of the road was never completed?

Some misunderstanding having arisen on this point, it was explained as the meaning of the witness that the Government had no obligation to pay interest on the portion of road between Buenaventura and Cordova until the railway (236) had been completed to Cali, 100 miles from Buenaventura.

Q. Where is Cordova? A. K. 20,400 from Buenaventura.

Q. Then the road, after having been built to Cordova, was extended on to Cali. A. Partly.

Q. Do you mean to say that the section of the road between Cordova and Cali was never completed? A. Never.

Q. Is that the reason why the Government was not to pay interest on the road from Buenaventura to Cordova? A. Of course, if the road had been built to Cali the Government would have paid the interest on that section to the extent of $8,000 per kilometer.

Q. That is the best explanation you have to offer? A. It is.

Q. Although you did not make reports covering the receipts and expenditures of the road from Buenaventura to Cordova for sending to the Government of Colombia, did you make any such reports to be forwarded to the home office of the Company in New York, or to be delivered to Mr. Cherry as manager? A. Yes.

Q. How frequently? A. It was variable. When Mr. Cherry was there I did not send them. The reports were made out at the end of each month.

Q. So that, in point of fact, you, as representative of the Company in Colombia, were in the habit of sending monthly reports of all the receipts and all the expenditures of the Company? A. I was.

Q. Were the reports in detail showing the items of receipts and expenditure, or were they merely copies of the Ledger entries? A. Gross reports, showing no details.

Q. From what source did you make up the reports? A. From the books.

(237) Q. Those destroyed? A. Yes, sir.

Q. To whom were they addressed? A. To Mr. Cherry.

Q. As President or Manager? A. Yes.

Q. When he was not in South America, where were they sent to him? A. To Detroit, New York, etc.

Q. Have you ever seen any of these reports since they left your hands? A. I have not.

Q. Do you know whether or not the substance of these reports was incorperated into any of the books that were kept in the New York Office? A. I do not.

Q. Were the accounts or statements, which you sent to the Government of Colombia and which you have just identified and testified to, full and complete detailed statements with respect to the expenditure and receipts of the Cauca Company for the dates covered by the statements or reports? A. They were full and complete for the time covered by the statements and for the parts of the road to which they referred.

Q. Were the statements and reports to which you referred as having been sent to Mr. Cherry as Manager of the Company, likewise complete for the dates to which they referred to?

Mr. STINE: The witness is not testifying that he sent the statements to the Company. He sent them to Mr. Cherry.

Mr. ROBERTSON: I assume that he is the Company?

Mr. STINE: I object to your saying the Company.

Mr. ROBERTSON: Very well. I have no objection whatever to changing the question.

A. They were

(238) Q. So that if such reports were all in existence and produced before this Commission, they would represent all the receipts and expenditure of the Cauca Company under your administration? A. They would.

Q. Were the monthly reports which you sent and which are not yet produced different in general form from those reports sent half-yearly to the Government of Colombia? A. They were.

Q. In what respect? A. In the respect that they referred to the total length of the line.

Q. In any other respect? A. No.

Mr. Stine inquired whether the documents produced by the Government were offered in evidence. Mr. Robertson replied that they were not offered yet. When the case for the Government was opened they expected to offer them.

CROSS EXAMINATION CONTINUED.

Q. I now hand you the definite plan of the line from Cordova to Sucre, and I ask you to translate into English the description pasted upon the map so that we may identify it? A. "Secretary Public Works, Series K, File 7,

No. 5, Ferrocarril del Cauca, Plan of definite survey from Cordova to Sucre."

Q. Is that one of the maps to which you have heretofore referred as having been sent to the Government of Colombia by the Cauca Co.? A. Yes, sir.

Q. Do you know whether or not the Company or anyone on its behalf, ever sent to the Government of Colombia any map other than this showing the same part of the line? A. No.

Q. Then in so far as this map indicates any special (239) portion of the road, this is the map to which you have referred? A. It is.

Marked "Exhibit No. 2, Defence."

The CHAIRMAN: May I ask who made these tracings?

Mr. ROBERTSON: It is our intention to bring out all this, sir.

The CHAIRMAN: Then I withdraw the question at present.

Q. Now I show you what purports to be a profile of the located line from Cordova to Sucre, please look at it and state if you have ever seen it before? A. Yes, I have seen it.

Q. Is that the profile map of the section of the Cauca Railway running from Cordova to Sucre, and represented on the plan map identified as exhibit 2 of this date? A. It is.

Q. Do you know whether it was sent to the Colombian Government? A. Yes. It was.

Q. Do you know whether any other profile covering the profile as shown here was ever sent to the Government? A. I do not know.

Q. Have you ever heard of a place called Catanga on the line of the Cauca railroad? A. I have.

Q. Now, running from Buenaventura through Cordova, how far is Catanga from Cordova? A. Approximately 23 K.

Q. I show you now the plan map of the located line from Sucre to Catanga, and ask you if you have ever seen that map before? A. I have; yes, sir.

Q. Is that one of the maps heretofore referred to as having been sent to the Government of Columbia by the (240) Cauca Co.? A. It is.

Q. Did you ever send any other similar map or plan of that part of the line to the Government? A. I did not.

Q. I now show you what purports to be a profile map of that portion of the Cauca Railway which runs from Su-

ere to Catanga, and ask if you have ever seen it before? A. I have.

Q. Is that one of the maps heretofore referred to as having been sent to the Government of Colombia by the Cauca Co.? A. It is.

Q. Did you ever send any other similar map or plan of that part of the line to the Government? A. I did not.

The four maps above mentioned were marked respectively exhibits 2, 3, 4 and 5, Defendant.

Q. Do you know by whom these maps were made? A. I do.

Q. These identical tracings? A. The very same ones.

Q. By whom were they made? A. Permit me to look. As follows:

Exhibit No. 2, begun by Mr. Kolb, finished by Mr. Dunn.

Exhibit No. 3 made by Mr. Dunn.

Exhibit No. 4 made by Mr. Carter.

Exhibit No. 5 made by Mr. Carter.

Q. Who were Messrs. Kolb and Dunn? A. Engineers in the employ of the road.

Q. Are they still alive? A. One of them is, I think.

Q. Which one? A. Dunn.

Q. Where does he live? A. Somewhere in South America; I am not quite sure where.

(241) Q Do you know anything as to the whereabouts of Mr. Kolb? A. He is in the cemetery of Buenaventura—what is left of him.

Q. I see—only the *cob* left. Now, let us be certain on this point. Have you heard that the Company or any one on its behalf ever made or sent to the Colombian Government any other maps relative to the line of the Cuca Railway than those shown in exhibits 2, 3, 4 and 5, inclusive? A. I have not.

Q. Are you able to state the amount of the gross earnings of the Company, from that part of the road between Cardova and Buenaventura, in the years '91, '92 and '93? A. No.

Q. Why not? A. Because it is a process of figuring, and I could not carry it in my head.

Q. Is there nothing to which you could refer that will enable you to state these earnings accurately? A. Yes.

Q. What, for instance? A. These books marked Exhs. 1, 2, 3. I could, by figuring on these books, get the amount more or less, although it would be a difficult process and would take time.

Q. Why would it be a difficult process of figuring? A. Well, because there are other documents required to follow the process all through, which I have not got.

Q. There would be? A. Yes; they would be required for that purpose.

Q. Can you state how much were the operation and maintenance expenses between Cordova and Buenaventura during the years '91, '92 and '93? A. Not by memory. I should also require the documents to make the division.

Q. Can you, by the examination of any of the books, put in here for evidence by the Cauca Company, make such a statement, or would you require for that purpose access to other documents?

(242) Mr. STINE: Before the witness answers I wish to state that the books of the Colombian Construction and Improvement Co. are also in.

A. I personally would require access to other books.

Q. Do you know any other individual who would not require such access? A. I do not.

Q. Do you know what were the gross earning of the Railway between Buenaventura and San Jose, from September, '93, to January, '94? A. That is four months. I could give the figure approximately.

Q. Can you show what they were for the respective periods named? A. I cannot show it.

Q. Why cannot you show it? A. Because I have not the books and documents, etc.

Q. Can you show it from any original books of account now in existence? A. I could not.

Q. Can you show what the gross earnings of the Railway are between Buenaventura and San Jose for any part of the periods mentioned? A. I cannot.

Mr. STINE: Q. Why not? A. Because the books were destroyed by fire.

Mr. ROBERTSON: Q. Do you know what were the expenses on the part of the line between Buenaventura and San Jose in '94, '95 and '96, or any one of those years? A. I cannot recollect.

Q. Are there any original books of account to which you have access which would enable you to make this statement? A. There are none.

Q. That is because they were burnt? A. Destroyed by fire.

(243) Q. Are there any copies of accounts made by yourself which would enable you to make the statement covering gross earnings of the railway, Buenaventura to San Jose, from September, '93 to '96, or which would enable

you to show what the operating expenses of the line were for the years '94, '95 and '96? A. I do not know.

Q. Did you ever, in your own hand, make copies of the original entries in the accounts of the company by which these facts could be ascertained and stated? A. I did.

Q. What became of these copies? A. They were sent to Mr. Cherry.

Q. Where? A. At various places—New York, Bogota, Detroit.

Q. You never heard of these accounts being destroyed? A. Never.

Q. How were the expenses of operating and constructing apportioned on the line between Cordova and Sucre? A. According to the nature of the work which the men did During the time the line was in construction the men working on it were charged under construction. When the line had been received by the Government, it came under operation. That was the rule adopted.

Q Would the same answer be applicable to the portion of the road between Cordova and San Jose? A. It would.

Q. Did you carry your cost of maintenance into the account relating to operating expenses? A. Yes, sir.

Q. Did you ever carry into the account covering operating expenses any construction work or moneys expended in construction? A. No.

Q. Always careful to keep them separate? A. Yes.

Q. Were you ever instructed by Mr. Cherry not to (244) draw on or send orders for materials, etc., to the New York office? A. Yes.

Q. When? A. Let me see—I think the latter part of 1893.

Q. What New York office do you refer to? A. To the office of the Colombian Construction and Improvement Co.

Q. Also to the office of the Cauca Company? A. As far as my memory goes, also.

Q. Did he give any reason for it? A. Yes.

Q. What was it? A. The reason he gave was that he wished the construction and other expenses to be carried on with the payments of *libranzas*.

Q. Was it not because the Company was short of money, and wanted to confine its expenses to receipts from the Government? A. I could give you no information.

Q. Have you an opinion? A. Very possibly.

Q. Possibly yes, or no? A. It may be. I was not in the Company's office to know whether they had money or not.

Q. You were the manager? A. In Buenaventura.

Q. Did you not know, as manager of the practical end of the Cauca Company at Buenaventura, that it was impossible to get funds from the home office as you needed them? A. I assume so.

Q. Did you ever draw drafts from there on the New York office which came back protested? A. Yes.

Q. How frequently? A. Possibly once.

Q. Or perhaps twice? A. I think it would not be more than three times.

Q. When? A. I think, in the latter part of 1893.

(245) Q. How much of the Company's line had been constructed at the time of the protest? A. The line was very near San Jose, and construction was going on.

Q. Do you remember what part of the year it was when these drafts were protested? A. I think it was August or September. It may have been October.

Q. Which was it now, August or October? A. Well, we will split the difference—call it September.

Q. It might have been before August? A. I did not say so, but it might. I cannot recollect that, five years ago.

Q. Do you remember the amount, or about the amount, of that draft? A. I do not.

Q. Was it large or small? A. What do you call small?

Q. Anything below $500. A. I think this was below $500.

Q. Was no explanation given why the Company could not pay? A. No explanation.

Mr. STINE: I can tell you if you want to know.

Q. When was traffic opened as far as Sucre? A. As far as Sucre it was in 1892.

Q. Do you remember what part of 1892? A. I think it may have been April or May, about there.

Q. Did you not formerly state that it was in July, 1892? A. I may have said so by the aid of documents, not from memory.

Q. If you have already stated that it was in July, do you wish to correct it? A. No; if I have testified that the road was open to Sucre in July, '92, I presume I did so with the proper information at hand.

(246) Q. Did you have pay-rolls showing the cost of construction from Cordova to Sucre? A. Yes.

Q. What became of them? A. Destroyed by fire.

Q. Were accurate copies sent to the Company's manager? A. No.

Q. Never sent copies of pay-rolls to anybody? A. No.

Q. Can you state the number of men carried on the pay-rolls? A. At what time?

Q. At the time of the completion of the road and its being opened to traffic at Sucre in July, 1892? A. Approximately; yes.

Q. I mean laboring men only, not including engineers. A. Yes; I mean men on the labor rolls, with their foremen. Pick and shovel gangs.

Q. Well, how many men were carried on the pay-rolls at that time, pick and shovel gangs, as you call them? A. There were between 450 and 500 men.

Q. Do you know that they were in daily service at the time? A. There were always a few absentees.

Q. Do you mean to say that there were at that time actually working on the road construction from 450 to 500 men? A. Yes; in 1892, at the time that were opening to Sucre.

Q. For how long prior to the opening of the road to Sucre did that state of affairs exist? A. Just at the time when I arrived at Buenaventura, there were probably only three-quarters of that number employed, and in April or May, '92, they were increased to the number I mentioned.

Q. Do you know that when you arrived on the ground there were as many as three-quarters of 450 or 500 men (247) carried on the pay-rolls of the Company, pick and shovel men, doing actual work of construction? A. The number sometimes varied. The force sometimes was only 300 men, at other times it increased 50 men; it was variable.

Q. And these men were employed between what points? A. These men were employed between Cordova and Sucre.

Q. How many kilometers is that? A. That is an extension of about 16 kil.

Q. And from the time you arrived in 1891 until the time the traffic was opened to Sucre was the average more or less than the number which you found engaged on the pick and shoval gangs when you arrived? A. The average was larger than the number I found when I arrived.

Q. How much larger? A. I should say about 50 per cent.

Q. What would you call the average number in the pick and shovel gangs engaged on construction work between the time of your arrival and the time of the opening of the road to Sucre in July, 1892? A. The average would be, I should say, about 300 men.

Q. Were they natives or imported laborers? A. There were some natives and some imported laborers.

Q. How would both classes average? A. Natives predominant.

Q. To what extent? A. To the extent of three to one at certain times and ten to one at others.

Q. What would they average during that period? A. I should say that the natives were probably six to one on an average.

Q. What were the daily wages of these laborers? A. Most of the men on construction got $1.40 per day, Colombian currency.

Q. And what would that average per day in Amer-
(248) ican gold? A. At the time I am speaking of it would average about 75 cts.

The CHAIRMAN: Q. Does that include subsistence? A. They got rations deducted from their wages.

Q. When did construction cease on the road as far as you know? A. Never; that is, entirely; it always went on though only with a reduced force.

Q. When did you begin to reduce the force with respect to the period of the opening of the traffic to Sucre, before or after that time? A. The force began to be reduced about '94.

Q. What do you mean "about '94"? A. I mean in the year 1894.

Q. About what time in that year? A. About the middle of it.

Q. Reduced from what number to what number? A. Well, reduced from 150 men to 50 men.

Q. Were the men on maintenance reduced as well as those on construction? A. They were not.

Q. Did you have separate gangs for maintenance? A. We did.

Q. How many men did you employ constantly on the work of maintenance? A. About 80.

Q. How distributed? A. By sections of so many kilometers, which we gave to each gang to take care of.

Q. They had nothing to do with anything but repairs? A. Only maintenance.

Q. What wages? A. It varied according to the work, from $1.20 to $1.40 per day; they supported themselves.

Q. For how long was this average of men maintained for reparation? A. It was kept up all through from the time I arrived until the time I left.

(249) Q. In other words, there were just as many men on reparation when you arrived as when you left? A. Practically.

Q. Now, from the middle of 1894 up to the time the road was handed over to the Government, how many men were employed on an average on construction? A. They started in the middle of '94 by reducing the number to about 50.

Q. Did they make any further reductions? A. About the latter part of the same year.

Q. To what number? A. To about 20 or 25.

Q. And then for 1895? A. The number was kept up pretty nearly to the end; there were always 20 men on construction, though not permanently.

Q. You mean that they continued construction occasionally, or did they work from day to day in greater or smaller numbers? A. Sometimes they were required on maintenance, but as a rule they worked on construction.

Q. What is the fewest number of men you know of as having been employed on construction from the middle of 1894? A. About 15.

Q. And what is the greatest number you know of as having been employed on maintenance at any time? A. About 200.

Q. When? A. That was in '93 when we had washouts.

Q. Did you not draft extra men from the construction corps? A. Occasionally.

Q. When that was done, did you charge the wages of the men usually engaged on construction to construction or to maintenance? A. To maintenance.

Q. So that the drafting of the men made no difference in the books? A. Exactly.

(250) Q. Have you pay-rolls showing the amount expended on construction between Caballete and Sucre? A. I have not.

Q. Do you know where they are? A. Yes, sir

Q. Where? A. In ashes.

Q. Are there no copies in existence? A. No.

Q. Why? A. Because none were ever made.

Q. Have you the pay-rolls of the force between Sucre and San Jose? A. I have not.

Q. They were burnt? A. Yes.

Q. No copies or statements of the number of men kept? A. No.

Q. Did the Company ever bring men from Jamaica to work? A. No.

Q. Did you have any Jamaicans on construction? A. We did.

Q. From where did you get them? A. Panama.

Q. The Company took them from Panama, or did they originally get them from Jamaica? A. I could not really

say very well; I understand they got them from Panama.

Q. Did more than one supply of men come? A. I was told so, but I do not know; it was prior to my arrival.

Q. No Jamaicans came after your arrival? A. No; no parties, some individuals.

Q. Do you know what was charged for conveying the Jamaicans from Panama to the railway line? A. I believe about $10, silver.

Q. Was each man charged a certain amount for passage? A. So I understand.

(251) Q. And the amount deducted from their wages? A. In a very few cases.

Q. Did that not give rise to disputes? A. It did not raise much dispute because very few paid at all.

Q. The Company therefore contemplated recovering for the passage money of the Jamaicans by deducting it from their wages? A. As a report I heard it; I was not there.

Q. You know that the arrangement the Company made with the Jamaicans was that they should pay it back? A. That was the agreement they had made.

Q. And you know that a great many refused to stand by that agreement? A. Yes.

Q. And therefore the company got no recompense except from the few who stayed? A. That is the situation.

Q. Do you know the actual amount charged by the Steamship Co.? A. $10 silver, I think.

Q. Are you willing to swear? A. No.

Mr. CISNEROS: Q. What was the exchange? A. I believe about 40 or 50 per cent. premium.

The CHAIRMAN: Q. What is the distance from Panama to Buenaventura? A. Three hundred and eighty miles.

Mr. ROBERTSON: Q Did you ever hear any complaints on the part of the Jamaicans, or any of the laboring men as to the quality of food furnished? A. No. Of course, you cannot satisfy everybody.

Q. There were occasional complaints by the men? A. (252) I suppose there were. To the effect that the plantains were not green enough or too green, etc.

Q. How many Jamaicans were there working there? A. I don't know; about 40 or 50.

Q. All brought from Panama? A. To my knowledge; so I understood.

Q. Do you say there were 40 in all? A. No, say that I knew 40 of them.

Q. You mean to say that a good many of the so-called Jamaicans took advadtage of the Company's offer to trans-

port themselves to Buenaventura and then disappeared up the valley? A. Yes.

Q. And their transportation charges are carried into the expense account of the company? A. Yes.

Q. And carried into the construction account? A. I did not carry it; it was done in the New York office.

Q. But it was done? A. I don't know. You must ask the man who did it.

Mr. CISNEROS: Q. But do you know how many there were? A. No; I do not.

Q. Not approximately? A. I have heard about 150 or 160.

Q. And as a matter of report, it was about 150 came over on the steamer? A. I think so.

Q. And the 40 or 50 which you knew did not run away? A. That is it.

Q. Were there houses or camps built for these gangs of laborers? A. Yes.

Q. How many and where? A. Where necessity made it imperative to have them.

Q. Did you have movable tents of any kind? A. No, we had corrugated iron sheds.

(253) Q. And were they transported from one place to another? A. The metal part.

Q. So that there were no new parts of metal required for each camp. A. No. Not for each camp.

Q. About how many of these metal roofs were purchased? A. They were not purchased as roofs; we had a shipment of iron sheets from England, and it was used for that purpose.

Q. How many metal roofs were made out of the corrugated iron? A. Probably half a dozen.

Q. How large? A. About 120 by 40.

Q. And some how small? A. 60 by 30.

Q. How many of these small ones? A. 5 or 6, or even 7.

Q. When did the road reach Caballete? A. The road reached Caballete at the end of June, 1891.

Q. Was the track laid down, completed and ready for operations to Caballete by June, 1891? A. I assume so, I was not there.

Q. Was it complete when you arrived? A. Yes, it was, with the exception of the bridge carried away by the floods.

Q. Where was that? A. San Cipriano.

Q. Is that west of Caballete? A. Yes.

Q. How far? A. 4 kilometers.

Q. And was that bridge restored? A. It was rebuilt; the work of rebuilding began the day I arrived.

Q. And when was it finished? A. About the end of December, '91.

Q. When was the traffic opened to Caballete? A. It (254) was opened to traffic in July, 1891.

Q. Was the bridge ever washed away again? A. The bridge was carried away in October, 1891, and the work of rebuilding resumed at once, and it was completed by the beginning of January, '92, and carried away again almost at once—I think the day it was finished—it was a trestle. Then it was re'built again by the end of February, and it stood until June, '92, when it was again washed away. Then a new trestle bridge was built, which afterwards served for putting up the iron bridge.

Q. How long did the iron bridge last? A. It is there now.

Q. When was it put up? A. In September, 1893.

Q. And during the intervals the traffic was interrupted? A. No, there was no interruption of service; the traffic was carried on with canoes.

Q. From the time of the breaking of the first bridge up to the construction of the iron bridge, for how long was the traffic interrupted over the stream? A. The line over the stream may have been interrupted for five or six months.

Q. And during that time the traffic was made with canoes? A. Yes.

Q. Did you ever have anything to show how much freight and how many passengers, exclusive of employees, were carried to and from Caballete? A. I did have, yes.

Q. What shape was it in? A. In the shape of a book showing the traffic on the road from the conductors' reports.

Q. In detail? A. Yes.

Q. And reports of freight traffic? A. Yes, in detail.

Q. What became of them? A. Destroyed by fire.

Q. No copies kept? A. No.

(255) Q Did you have a passenger and freight station at Caballete? A. There was not.

Q. What sidings were there at that station? A. None.

Q. When did the traffic reach Piedra Piedra? A. About three months later—about October, '91, I think.

Q. Did your Company have no stations or freight houses or sidings at that point? A. No, sir.

Q. When did the traffic reach Bodegas? A. I think about the beginning of 1892.

Q. Do you remember as regard the 3 stations—Cabal-

lete, Piedra Piedra and Bodegas—whether the traffic was heavy or light? A. Yes.

Q. Which was it? A. Light.

Q. Do you know why? A. I think I do.

Q. Why? A. Because it was not a part of the road accessible to mules.

Q. Was the Dagua between the river and the railway? A. Yes; and other obstacles as well.

Q. What other obstacles? A. There was a stretch of wooded land where there was no road.

Mr. CISNEROS: Q. The road did not strike the mule road until Sucre? A. It did not.

Mr. ROBERTSON: Q. When did the traffic reach Sucre? A. About June, '92, if I recollect well.

(256) Q. When was traffic opened to that point? A. As soon as the track reached there.

Q. How much freight and passengers were transported to and from that station? A. I do not remember.

Q. Did you have the total amount? A. Yes.

Q. Was that burnt? A. Yes.

Q. No copies? A. No.

Q. Did your Company have a station there? A. It did.

Q. What kind of a building was it? A. A building used as a warehouse.

Q. Was it in the form and shape of a well-constructed building? A. It was.

Q. How large? A. It may have been 40 by 30 ft.

Q. How many stories? A. One.

Q. Was it painted? A. It was not.

Q. Plain boards? A. Yes, they were.

Q. Tongued and grooved? A. I think not.

Q. How was it finished inside? A. It was not finished at all.

Q. How was it floored? A. Palm leaves.

Q. Laid down or woven? A. Laid down.

Q. How was it roofed? A. Zinc.

Q. Is that a fair sample of the stations on the road? A. No.

Q. Were the others worse? A. There were some better.

(257) Q. And some worse? A. No.

The CHAIR: Q. Was it permanent or temporary? A. Temporary.

Q. How did you operate the locomotives at these various stations? Did you run backwards, or did you have turn-tables? A. As regards the stations mentioned just now, we ran the trains and locomotives backwards.

Q. That is, you ran up with locomotives ahead and came back with locomotives behind? A. Precisely.

Q. Was this, then, the method of operating until the traffic reached San Jose? A. It was

Q. Did you have any particular terminal facilities at San Jose? A. Yes.

Q. What? A. Switches, sidings, warehouses.

Q. Turn-tables? A. No turn-tables.

Q. What did you do? A. The engines were built to work both ways.

Q. What extent of sidings? A. About 160 feet, connected at each end with a proper switch.

Q. What kind of stations did you have for freight and passengers? A. We had a building of about 135 ft. long by about 40 ft. broad.

Q. How many stories? A. One.

Q. What material was it made of? A. The floor of 2" plank; sides and roof of corrugated iron.

Q. Do you remember the tariff rates for passengers, freight and cattle when the Company took possession of the (258) road? A. No; I was not there.

Q. You know what the tariff was when you took possession of the road? A. Yes; 50 cts. per 100 lbs. from Buenaventura to Cordova, $3 per head of cattle, the same for both ways, Colombian currency.

Mr. CISNEROS: Q. Do you know if there was any difference on salt? A. There was at some time a reduction of 10 cts.

Q. Was it permanent? A. Well, it varied; we kept it up some time.

Q. Until what time was the tariff your mention extant? A. Until we got to San Jose in 1893.

Q. What were the passenger rates? A. $1 first, and 50 cts. second, to Cordova.

Q. Was that same rate continued until you left the Company? A. No.

Q. When was it changed, and how? A. When we arrived at San Jose we changed the tariff to the following: $1 per 100 lbs. merchandise, 75 cts. per 100 lbs. salt; passengers, $2.25 first class, and $1.50 second; $6 per head cattle—Buenaventura to San Jose.

Q. And for the intermediate stations? A. There never was any intermediate freight and very little passenger traffic.

Mr. CISNEROS: Q. When did you abandon the Cordova Station? A. In the latter part September of 1893.

Mr. ROBERTSON: Q. Have you any paper or information which will enable you to testify to the amount of freight

which passed over the railway during '91 to '96, inclusive? A. I have not.

(259) Q. Did you keep separate accounts which would enable you to make a statement of that? A. I did.

Q. Were they burnt? A. They were.

Q. No copies kept? A. None.

Q. In your account or report to the Government Jan. to July, '92, you charge expenses amounting to $15,085.65 for that part of the road from Cordova to Caballete; what items constituted this charge? A. Work done on that road; I could not specify what kind of work.

Q. This, then, was all spent, you know, for maintenance on that part of the road? A. Yes.

Q. Not for operating expenses? A. No, just expenses for labor on that part of the road.

Q. There was no new construction there at that time, so far as you know? A. No.

Q. In the same account you credit $271.20; what was that for? A. I could not remember at this stage what it was for.

Q. Have you no idea? A. I have not the slightest.

Q. By reflecting upon the manner in which you kept the account could you not refresh your memory as to the general nature of that item? A. No. I think not.

Mr. CISNEROS: Q. When was the competition by canoes? A. It took place about 1893, before opening to San Jose.

Q. And what was that competition, not on account of the increase made on the first tariff? A. Well, there had been some talk about it, but it was not on that account.

(260) Q. In the account of operating expenses, Cordova to Sucre, you have in July, '92, $4,664.15, and show receipts of $957.75; was the $4,664.15 really the cost of maintenance arising from that part of the road? A. If the figure is on the report, there is no doubt that it was so.

Q. Do you know the items making up that amount? A. Payments of laborers, materials, etc. Purchases.

Q. Can you specify any of it? A. No, not now.

Q. Not the material? A. Ties, I suppose, etc.

Q. That is merely a supposition? A. It is not a supposition, it is a knowledge; there was always material used on the road.

Q. Do you know to what extent the expenditure for material went? A. No, I cannot now recollect.

Q. You cannot tell the proportion between labor and material? A. No, I don't know.

Q. Well, the receipts in that part are stated as $957.75;

how is that made up? A. It is the receipts of traffic of that section.

Q. Can you estimate between the part received for passengers and the part for freight? A. No, I could not.

Q. Can you give an estimate of the proportions? A. I could not.

Q. Not approximately? A. It would be entirely a chance shot.

Q. As manager did you not know whether the passenger receipts exceeded the freight? A. About equal.

Q. In your statement to the Government, January, '93, to July, '93, the receipts are stated to have been $87,609.75, and the expenses $40,066.65. Do you know how these receipts and expenses are made up? A. I do.

Q. Do you know the different items that went into the statement of receipts for instance? A. Not specifically, no.
(261) Q. Not the proportion between passengers and freight? A. I do not.

Q. Do you know the items that constitute the expenditure? A. Yes.

Q. State them? A. Timber, materials, labor, etc.

Q. All employed and used as repairs and maintenance? A. It was.

Q. Nothing on construction? A. No.

The CHAIRMAN: Q. Were there no new rails laid? A. After the rails were laid they were not changed on that section.

Mr. ROBERTSON: Q. Is it not a fact that the Company, on coming into possession, found and received a large quantity of rails? A. I judge so.

Q. What amount, as nearly as you are informed? A. I should say probably 120 or 150 tons.

Q. Are you willing to swear that the Company did not receive from the Government between 350 and 400 tons of rails? A. No, I will not swear to it; the inventory will show it better than I can tell.

Q. Your report to the Government July, '94, to Jan. '95, shows receipts $23,022.66 and expenditure $23,948.79: do you know how these receipts are made up and what items are included in the expenditure? A. Yes; freight and passengers for receipts, and labor and materials for expenditure.

Q. Do you know where the labor or material was em-
(262) ployed? A. Yes; on the road between Cordova, Sucre and San Jose.

Q. In your report to the Government covering the period Jan., '95, to July, '95, you state the receipts $22,616.33 and expenditure $16,384.14; what were these re-

ceipts for and what as the expenditure? A. The receipts freight and passengers, and the expenses labor and material.

Q. Do you know in what proportion the expenses were made as regards labor and material? A. No, I do not; I do not recollect.

Q. Do you know as regards any of the expenses included in any of the reports? A. No; I do not recollect.

Q. I ask the same questions as regards the report to Dec., '95, and the report to December, '96, and take it that the answers are the same? A. Yes, they are.

Q. Do you know whether any report was made to the Government for July, '93, to July, '94? A. I know that a report was made for that period.

Q. Where is it? A. After it left my hands I know nothing about it. I assume it has been received.

Q. Can you throw any light on the items? A. I cannot throw light on the details.

Q. After it was made the duplicate was sent to Mr. Cherry as manager?

Mr. CISNEROS: Perhaps Mr. Blum can say whether there was much difference between one and another.

A. Not as a rule.

Q. Have you any recollection as to these particulars for July, '93, to January, '94? A. No; I remember nothing particular about it.

Mr. CISNEROS: Q. About the same as to the following one? A. When the line was opened up more the receipts were greater.

(263) Mr. ROBERTSON: Q. Have you ever given the question of the net receipts of the Company any consideration? A. No; I have not given it any particular consideration.

Q. Do you know whether the Railway Co. received more from its operation than was expended in operating the road? A. At certain periods it received more and at others considerably less.

Q. Were there many periods of deficit? A. Most of the first few years, especially, there was a considerable deficit on the operation of the road; during the latter part there was a profit.

Q. Was the deficit while the Company was keeping up its construction? A. Yes; most of it.

Q. So that while the Company went ahead with the construction of the road it was piling up a deficit? A. In the operation; yes.

Q. When it ceased construction, then it began to make a profit? A. Precisely.

Q. Do you see nothing peculiar in that state of affairs? A. I cannot say that I do.

Q. Do you remember how this Company was looked upon at the time you went there first? A. By whom?

Q. Anybody. Especially the officials of the Company. A. At that time it was thought that the line would be largely beneficial to the development of the country.

Q. At that time what was the general impression as to the extent to which the road would be built? A. To Manizales.

Q. How far is that? A. 350 to 400 miles.

Q. And it also contemplated the construction of branches? A. Yes.

(264) Q. Was it then looked upon as a large enterprise and likely to be profitable? A. That was the view.

Q. When did that feeling of confidence begin to subside?

Mr. Stine objected to the question. Mr. Robertson supposed that the witness could be questioned as to the permanency of the enterprise at the time he was manager thereof. The chairman ruled that the question be allowed, Mr. Stine admitting the question to avoid argument. Question repeated.

A. I heard that the feeling of confidence began to subside when the report circulated that there was some difficulty as to the return of the deposit of $50,000.

Q. When was that? A. That was about the beginning of '92 or the end of '91.

Q. Which was it, '91 or '92? A. I said to the best of my knowledge.

Q. So the feeling of confidence commenced to cease about the end of '91 or the beginning of '92? When was the feeling of confidence restored? A. I don't know that it ever was.

Q. So that from the close of '91 the manager never expected to conclude that road, or get on with it successfully? A. No, I did not say that.

Q. You say that you heard remarks or reports to that effect? A. To the effect of what?

Q. To the effect that there was doubt as to the success of the Company; that you found out there were reports in circulation to the effect that there might be some difficulty in securing the return of the deposit. Whom did you hear speak about any future success of the Company? A. Of various of its employees and men to whom I might have spoken as to prospects.

(265) Q. Was this affair of the future success of the Company purely a matter of your imagination? A. I had no fear as to the future success of the Company.

Q. How did this lack of confidence manifest itself? A. It was due to defaults on the part of the Colombian Government.

Q. And, then, who entertained this lack of confidence? A. I did.

Q. You were the manager of the Company? A. I was the manager of the road.

Q. Did you ever communicate your feeling to anybody? A. I suppose I may have.

Q. And without concealing it from your superior officers? You had some discussions with them, I suppose.

The CHAIRMAN: The chair does not see the relevancy of this line of inquiry. We are simply to find out the amount of expenditure for which the Company is to be indemnified, and it makes no difference whether confidence was lost in the Company's success or not. The road has been handed over to the Government, and is agreed to be paid for. I point this out at the present time for all, in order that the minutes may not be incumbered with a mass of irrelevant matter.

Mr. Robertson argued that his line of inquiry was perfectly relevant, as tending to find out and show that the Company never believed from the start that the road would be completed. In deference to the chair, however, he would close the cross examination of this witness.

Examination taken up for the Cauca Co. by Mr. Stine:

Q. You have been shown a great many different statements as being in your handwriting, have you not? A. (266) I have.

Q. You have stated, with reference to these different statements which were put in by the Government to-day, as to some that you did not know they had reached the Government, and as to others that you did know. How did you know this? A. Well, the statements I know reached the Government are those for interest, because they got paid later on.

Q. You stated, did you not, that these statements referred to the part of the road which was being operated beyond Cordova, and you gave as the reason that in the concession the Government had nothing to do with the receipts of the 20 kilometers which had been handed over until the section to Cali had been finished? A. I did.

Q. Did the Government ever demand from you or from

the Company a statement of the receipts and expenditures of the 20 kil.? A. Never did.

Q. Now, Mr. Blum, you have testified on a previous examination that the gross income of the road during all the years the Cauca Co. owned it, from every source—from traffic, passenger service, interest moneys which the Government turned over, and from the $50,000 deposit returned in the shape of libranzas—had amounted to a certain sum? A. I am not aware that I did.

Q. Can you state what it was, roughly? A. I could figure it out in a way.

Q. Well, figure it out. A. Between $800,000 and $900,000, Colombian money.

Q. You have testified that there were remitted to New York $156,000 gold to Mr. Cherry. This money represents the difference between the receipts from the Government and the railway and the expenses of operating and constructing the road, does it not? A. It is a correct statement. I mean the difference between the money from all sources and the expenses on the road.

(267) Mr. CISNEROS: Q. Please explain that. A. Suppose, for instance, that we take the total sum of money which has been received on the road, whether that money be from the sale of drafts, from payments by the Government, return of deposit, freight or passenger earnings, or any other source whatever, and if we deduct from that sum $156,000 gold, we have the amount of money which has actually been expended on the road at Buenaventura.

Mr. STINE: Q. A number of questions were asked you with reference to the number of men employed on the road, and we gradually got down in the beginning of '94, I think, to 30 men on construction, and then to 15 men; please state whether that was prior or subsequent to the passage of the Law of October, '94, which took the railway from the Company? A. It was subsequent.

Q. In other words, the falling off was following on the passage of the Law? A. Yes.

Q. Now, you have been asked a number of questions with regard to the Jamaicans. After they deserted, was an effort made to bring them back and force them to work? A. There was.

Q. Was it successful? A. It was not.

Q. On a question of rails you have testified that a certain number of rails were given to the Company at the time the road was turned over. What was the weight of these rails? A. About 30 lbs.

Mr. CISNEROS: All above Cordova were 35 lbs.

Q. What was done with the rails laid from Buenaven-

tura to Cordova? A. About two-thirds of them were replaced.

(268) Q. By heavier rails? A. Yes; 40 lbs.

Q. Where did they come from? A. England.

Q. Purchased by this Company? A. Yes.

Q. These rails taken up in this way, besides those turned over, what was done with them? A. They are alongside of the track.

Q. They are the property of the Government? A. Yes.

Q. You have heard Mr. Robertson make some remarks as to the deficit and profit on the operation? A. There was a deficit on the first few years of the enterprise, on the operation.

Q. What were the causes of the deficit? A. There was a very light traffic.

Q. Was not yellow fever there? A. There was smallpox.

Q. Were there not floods there? A. There were floods.

Q. During the first few years there were floods and smallpox, and, if I understand you correctly, the traffic was light? A. There was a light traffic.

Q. Now, will you please state whether or not the receipts from operating gradually increased? A. They increased as the road was extended towards San Jose.

Q. When was the road extended to San Jose? A. Latter part of 1893.

Q. And did you make reports on this extension regularly from time to time to the Government? A. Yes.

Q. Did they show that the receipts of the road were increasing? A. They did.

Q. Did you continue to make these reports to the Government after the Law was passed taking away the railway? A. Yes.

(269) Q. And the receipts of this section continued to increase? A. Yes.

Q. Steadily? A. No; there were spurts. Sometimes it was more, and sometimes it was less.

Q. Gradually then? A. Yes.

Q. All this in spite of the lack of confidence to which you have testified? A. Yes.

Q. Nevertheless the receipts continued to increase, and the reports went to the Government? A. Yes; showing the increase.

Q. When I speak of receipts I mean net earnings? A. They did.

Mr. Cisneros: Q. To what cause do you attribute the increase? A. The natural development of the country.

Mr. CISNEROS: Q. What was the increase of the tariff between San Jose and Cordova, I mean from Buenaventura to these two places? A. Double.

Mr. CISNEROS: Q. I understand that you said that the tariff to Cordova was 50 cts.? A. That is it.

Mr. ROBERTSON: Q. Do you consider the increase from doubling the tariff greater than that from the natural development of the country? A. I suppose it is partly attributable to that.

Q. How much of this increase do you consider as attributable to the new tariff? A. Every bit of the increase.

(270) Mr. ROBERTSON: That is all.

The CHAIRMAN: Q. I would like to ask the witness to state how many kilometers of track he found, on his arrival, in operation, and how many he left there? A. When I arrived at Buenaventura the rails were laid to Piedra Piedra K. 31. The road was then being built beyond that and it was finished to San Jose which is K. 36.740 to where the track was laid. Besides that there was grading ahead of San Jose not in a complete condition.

The CHAIRMAN: Q. How much work was done by the Company prior to your arrival? A. I could not say.

Mr. ROBERTSON: Q. Why is it that all the accounts of the Railway Company were really carried into the books of the Colombian Construction and Improvement Company? A. You must ask that from somebody here. I was never employed in the New York office. I know that the Colombian Construction and Improvement Company was building the road.

Mr. ROBERTSON: Q. Did you head your books of account or characterize your books as of the Colombian Construction and Improvement Company or the Cauca Company? A. As neither. I headed them Cauca Railway.

Mr. ROBERTSON: Q. Did you understand that you were reporting to Mr. Cherry as President of the Colombian Construction & Improvement Co.? A. I was reporting to Mr. Cherry as General Manager of the Ferrocarril del Cauca.

(271) Q. Did you not understand that he was President or Manager of the Colombian Construction & Improvement Co.? A. I thought he was.

Q. And was it not in that capacity that you were reporting to him? A. I reported to him in the capacity of Manager of the Cauca Railway.

Q. Did you report to him as the Manager of the Company; that is, the Colombian Construction & Improvement Co.? A. I did.

The CHAIRMAN: As already notified, the expert is at

work on the books, and will require till the 15th of next month to render his report. In order to save time, let us decide now when we can go on with the taking of testimony.

After some discussion as to the date of the adjournment, it was understood that the meeting would adjourn until Thursday next, the 24th, and, on a motion duly seconded, the meeting adjourned at 2:45 p. m.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Ninth Session.

(272) Held at 30 Broad Street, on Thursday, the 24th day of June, 1897, at 10 A. M.

Government refers to opinion of Evarts, Choate & Beman—Discussion as to communication with the Colombian Government at Bogota.

Present: Commissioners, Attorneys and Counsels as before.

The Chairman called the meeting to order at 10:30 A. M.

Mr. ROBERTSON: If the Commission please, you will remember that when when we took our adjournment some time ago, we did it for the purpose of communicating with our Government, if possible. Now, on attempting to communicate with the Colombian Minister at Washington, it was found that he was still abroad in England, and would not be back for some time, and that there was nobody in the United States who was authorized to act in behalf of the Government in this matter. In that emergency Mr. Cisneros and myself consulted seriously on the matter, and it was deemed wise to submit the points which we had raised to wholly disinterested counsel; and I thought that, in order that Mr. Cisneros might have all possible information, that it would be wise to consult very eminent and internationally well-known counsel. We wished to have au-

thoritative information as to whether the course mapped out by the Commission would keep us in or take us out of the scope of the Convention, and Mr. Cisneros resolved to retain Messrs. Evarts, Choate & Beman, and submit the (273) questions I have raised here to them for their opinion. This was done. We have the opinion of the firm, after looking into the matter, saying that, in their judgment, the rule laid by the Commission carried the inquiry wholly beyond the scope of the convention, and, in their judgment, nothing was ever submitted to arbitration in this matter except the bare question of the legitimate and proper costs or expenditure in the laying out, survey, construction and equipment of the railway; that the Commission under the convention has no power at all to examine the books of account with a view to ascertaining any balance of general expenditures or receipts, and that to proceed in that way will not be to proceed within the powers given by the convention, but to proceed outside of such powers. They have further advised that the only proper course for the Colombian representative, Mr. Cisneros, to pursue in this emergency will, in their judgment, be to ask for sufficient time to enable him to submit the present shape of the case to his principal, await the Government's definite instructions and be guided by them. In the event that his Government should waive the point that the tribunal is proceeding outside of the convention, then he will go ahead with the case and submit his proofs on the questions now at issue, and in the event that his Government should decline to proceed upon anything except that which had been provided for in the convention, he would then indicate this position and refuse to proceed as regards these extraneous matters. The record was submitted to Messrs. Evarts, Choate & Beman, and they agreed with me on variots other objections which I have raised, and they have declared it as their opinion that the learned representative or Commissioner appointed on behalf of the Cauca Company has legally, under all aspects of the case, disqualified himself to sit on this Commission by volunteering statements of facts received by the Commission as proofs, and undertaking the role of witness. Having sat as as an official officer, he has taken upon himself the proving of certain facts which, as a judge, he is to pass (274) upon, and they say that they have never heard of anything of that kind being done, and in their judgment the Commission has been broken on the part of one of the Commissioners by an abdication by the said Commissioner. They also sustain me on the points which I have raised as to the reception of copies of copies, inasmuch as the Com-

mittee has made the ruling that only legal evidence shall be accepted, and they have departed from that rule by accepting copies of copies. We submitted to them also the question whether or not the Cauca Co., having previously assigned all its rights and interest in the Concession and the property involved, was in a position to become a party to this Convention. The Construction Company was not a party to the Convention, and nothing that could be done here would affect its standing with our Government. On all these points they advised that a sufficient adjournment be applied for to enable the Representative of the Colombian Government to consult his Government with the view to seeing whether it would be possible to conciliate the opposing interests and go ahead harmoniously as was intended by the Convention, arrive at a new Convention, or see what should be done. In making these statements, I cannot close my remarks without saying that personally I have the highest respect for the members of the Commission, and I am sure that they will accord to Mr. Cisneros that he was acting from the highest sense of honor in submitting the questions to Messrs. Everts, Choate & Beman, as it was done in the hope of seeing some way in which these proceedings could go on.

The CHAIRMAN: The Chair would like to ask as to the manner in which these questions were submitted, and I think we should have before us the data that were presented, as otherwise it seems to the Chair that any such opinion is *ex parte*. It would be necessary before considering such an opinion that the facts be produced on both sides. The Chair also wishes to say that he has already stated what it covered by the decision as to the introduction of legal evidence only; the object of that was (275) merely to rule out hearsay evidence.

Mr. Stine inquired which member of the firm had given this opinion, was it Mr. Choate, or was it Mr. Cleveland, or one of the juniors?

Mr. Robertson thought it might not suit Mr. Cisneros to mention which particular member of the firm gave the opinion.

Mr. ROBERTSON: The Chairman has asked a question and I beg to answer it. This matter was submitted to these gentlemen by handing them the act of 4th January, the ruling of the Chair of 24th May, the modification introduced on the 2d of June, and other papers. The whole of the record was shown to them, and they examined the parts dealing with the objections raised on behalf of the Government and also the testimony which Mr. Schramme had given.

The CHAIRMAN: Please tell the meeting the character of the request made.

Mr. ROBERTSON: It was that they should give us their opinion as to the scope of the Convention, whether or not the Commission has power to balance the books and accounts in accordance with the chairman's ruling and reach the indemnity by subtracting the receipts from the expenditures; and they were asked also to pass on the questions as to the legal character as evidence of copies of copies of the books of original entry; and they were asked to consider the whole question and advise the proper course. I was not present at all these consultations, and I am not sure as to the details of what Mr. Cisneros did or said, but, so far as I am aware, they were not asked to give an opinion sustaining our contention at all. My personal views were not stated to the member who was consulted until after he had communicated his own views.

The CHAIRMAN: This record was before them then?

Mr. ROBERTSON: Not in its entirety. They examined the records on the points which had been submitted. I will ask Mr. Cisneros if he stated his views. (To Mr. Cisneros:) Did you state what you wanted of these gentlemen?

(276) Mr. CISNEROS: I asked them to advise me what to do—whether to go on or not. This matter is of the greatest importance to the Governmet and also to myself, as all my interests are in Colombia, and besides that my honor is at stake also. It would decidedly reflect against me, if I allowed the Commission to proceed on matters entirely outside of the convention of the fourth of January. I may say that, although Mr. Robertson advised me to withdraw, I did not case to take such an important step without proper consideration, and I went to Washington to see if I could not arrange matters on a satisfactory basis. I have obtained this valuable opinion because I was uneasy in my mind as to what this Commission was doing; there are large interests at stake and I wanted to have thoroughly impartial, as well as competent, advice as to how to proceed, and although it has put my Government to considerable expense, I preferred it so.

Mr. ROBERTSON: It would not be right for us to go on with the trial of this matter in a way which may lead to a wholly unauthorized result. If we continued now, the consequence would be that Colombia would be in honor bound to pay every penny that might be awarded to the Cauca Company by this Commission, whether authorized by the Convention or not.

Mr. STINE: You are trying to draw out the intention of the chair by means of covert threats.

Mr. ROBERTSON: Messrs. Evarts, Choat & Beaman stated that there was only one honorable course to pursue, and that was to retire from this Arbitration.

The CHAIRMAN: I consider that we are borrowing trouble. Our object is, as I have frequently stated, to get at all facts; and the fact of my admitting books and papers which are not legal evidence, is not material. What we want is to arrive at the real facts of the case. It does not follow that this Commission is bound to accept all evidence; we can rule some in and some out. I think the proceedings are entirely in accordance with the Convention, and there is no ground for complaint on the part of the Cauca Company or on the part of Colombian Government.

(277) Mr. STINE: Gentlemen, in the first place, I wish to call your attention to the history of these proceedings. After we had been meeting here for over seven weeks, and after discussing in letters which Mr. Cisneros and myself addressed to you (the chairman) and the other members of the Commission, obtaining expert opinion ourself on the scope of the agreement, I say, after seven weeks of discussion on this very question of the scope of the agreement, these gentlemen come into the meeting and ask for an adjournment of one week in order to give them an opportunity of consulting their Minister as to whether they shall proceed or withdraw. I mentioned at the time, if you will recollect, that it was a covert threat and now it is an overt threat. They have allowed four weeks more to elapse, during which time they have come here repeatedly to attend meetings of this Commission, cross examining witnesses, making elaborate inquiries, and at the end of this time they come here and say that the Minister is not here. They spoke weeks ago of cabling to the President of Colombia; they have been quite at liberty to do so; and now, after going through our evidence and finding that this same evidence is indeed very hard to dispute, they come here and give us the opinion of the firm in question. I have every respect for that firm. But I would like to know which member of the firm gave the opinion. If it is a matter of one of the juniors in that firm, I do not think their opinion nor even that of Mr. Chate himself should have more weight with this Commission than that of any other lawyer. Mr. Chairman, the very manner of stating a case may show the sort of decision a person wants. If he hears only one side of the case, he is influenced by the fact that the man stating the case is his own particular

client. I can state the case from my own point of view to an eminent lawyer and get a decision in my favor. Therefore, I claim that the opinion of a lawyer who knows nothing about the case in the midst of the proceeding is entitled to no weight whatever. I think, furthermore, that taking this Convention and taking its proper interpretation (278) their opinion on the questions submitted to them are entitled to still less weight. This Commission is not a Commission appointed to act as a judicial tribunal, because my friend is perfectly right in stating that no judge may be a witness in his own case. The convention states in specifical terms that this Commission shall lay down its own rules. We could put Mr. Pena or Mr. Cisneros on the stand, if the Commission required it. What this Commission wants is the truth. It is well known to your Government that Mr. Schramme was largely interested in these proceedings, pecuniarily and otherwise, and, nevertheless, your Government insisted on his becoming a Commissioner. It is not possible to suppose that Mr. Schramme was not going to consider his own interests; the Government knew this perfectly well. It is an absurdity for you to say that, after the Government has given the Commission this power to lay down its own rules of procedure, that because Mr. Schramme has acted as a witness before the Commission, he is thereby disqualified to act as a Commissioner. If you claim that, it is an absurdity. Do you want it known that the Colombian Government has crawled out of its honorable obligations on a petty technical excuse of that kind? Or do you want the Commission to get the unadulterated truth from whatever source it may come?

Fortunately, the representative of the Cauca Company has foreseen the probability of this withdrawal, and he had inserted in the convention a clause covering the same, and requiring the nomination of another Commissioner; and if the Government of Colombia refuses to abide by it, I think that the aid of our Government will be invoked, and, I believe, not without success.

If any Commissioner leaves this meeting for no other reason than because Mr. Schramme gave his testimony of what took place; if you withdraw, claiming the Cauca Company has no rights in this matter because it parted with all its rights, because of the contract it made with the Colombian Construction and Improvement Company; if any such ground as that is advanced by you for with-(279) drawing; if you withdraw because, after having had eight or nine weeks so consult your Government, you find now that your Minister is out of town; if you want

this flimsy kind of pretext to withdraw, why, gentlemen, do it. If you insist on withdrawing, we shall invoke our rights under this convention to appoint another member. We are prepared to finish our case. We call upon the other side to put in a rebuttal; and if they fail to do so, I beg, Mr. Chairman, to ask that this meeting be suspended to give the representatives of Colombia an opportunity of withdrawing.

Mr ROBERTSON: You have now enumerated carefully all the alleged trivial reasons why we wish to withdraw. You have failed, however, to say anything about the substantial reasons thereof, viz.: that the Commission is proceeding outside of the convention of the fourth January.

Mr. CISNEROS: There seems to be some mistake on the reason why I sought this opinion. We do not for one moment contend that the said opinion is to influence the Commission.

Mr. STINE: As regards going outside of the convention, I should like to say a few words on that subject. The chairman has given you a full answer to that. He has said that he will let in all the knowledge and all the evidence Commission can require. It does not follow that it will be all considered in making the award. I wish to say that the convention has given this Commission the right to proceed according to its own rules, and does not limit it in any way, shape or form, as you seem to think. I wish furthermore to say that no commission which ever sat, which was composed of laymen, ever confined itself to the rules of procedure and of evidence which prevail in a court of law. This has never been the case; there is a certain latitude as to the introduction of evidence and accounts. The Commission has primarily in view the obtaining of the truth. By your threat of withdrawing you cannot prevent this Commission from getting at the truth.

(280) Mr. ROBERTSON: I object to the continuous use of the word "threat." I think this Commission understands that we are not intending to threaten, and I certainly do not think that the statement of our opinion as to the course we are to persue after serious consideration, should be taken as a threat.

The CHAIRMAN: The Chair does not consider it a threat and is not at all influenced by such remarks.

Mr. STINE: Mr. Chairman, I object to any further adjournment of this Commission for the purpose of giving Mr. Cisneros or anybody else an opportunity of consulting with the Government as to whether or not they are going to proceed. If during the progress of this Commission

proceedings we are to be influenced by the kindness or the condescension of the Colombian Government, in deciding for us what the scope of the Convention is, we do not care whether they withdraw now. They cannot have their own way because they threaten to disrupt the Commission. It would be beneath the dignity of this Commission to be influenced by such a consideration. If this Commission is going to be at the mercy of the kind opinion which the Colombian Government may express at every stage of the proceedings as to what it shall or shall not do, I for one, consider that this Commission will be doing a very wrong thing.

Mr. PENA: I consider that on my part there is no objection for the anjournment of two months desired by the Representative for Colombia, inasmuch as we are still within the terms granted by the Convention. Our Representative has perfect right to obtain the evidence and proofs that he may require and consider necessary, both legal and moral, in order to defend the interests of the Government. Consequently I vote in favor of the adjournment.

Mr. CISNEROS: Mr. Stine, I do not see why, since you wish to get at the truth, you should object to our consulting the Government. We are in a very serious position and must proceed with due authority. You seem to take this affair in a suspicious fashion; I can assure you that we have no desire of delaying unnecessarily the Commis-
(281) sion. I personally have a great many interests to attend to in Europe and in Colombia, and I want the matter settled as soon as practicable.

Mr STINE: It will be an outrage to adjourn the Commission for two months. They say that unless the Government tells them to proceed they will withdraw, so the adjournment appears absurd.

Mr. CISNEROS: They are my principals, and I wish to consult them.

Mr. ROBERTSON: We make a formal application for an adjournment on the grounds I mention in this paper which I now introduce.

The chairman then read the paper.

Mr. CISNEROS: I wish to remind Mr. Stine that I stated clearly that this opinion of Messrs. Evarts, Choate & Beman was not meant to influence the Commission; it was for my own guidance.

Mr. STINE: I do not see why it is introduced, then.

Mr. ROBERTSON: Mr. Chairman, we have made our statements with all due courtesy to this Commission and

in response throughout we have been met by taunts and insults to the Colombian Government. We have been called thieves or robbers, highwaymen and so forth. However, in view of the feeling which we know exists on the other side, we have deemed it wise to proceed with the utmost caution and courtesy. I do not think that any better opinion can be introduced than the one we have taken and to relieve my honorable friend's mind, I will say that we consulted the second highest member of the firm. We have presented this statement of our reasons and we make it the basis of our application for an adjournment, in order that our requests may be in such shape as to show the justice of our position.

The CHAIRMAN: Gentlemen—In receiving this paper from the Representative of the Colombian Government, the Chair would state that he believes that the presenting of this paper to the Government now would place the Commission in a false light. As heretofore stated, your Chairman thinks that the ruling which he has given has been misunderstood, and that the Govern-
(282) ment possibly anticipates the final adjudication of the Commission and fears that it may be proceeding beyond the limits of the convention. It should be remembered that when the Chair ruled in regard to to the scope of this convention the contending parties were very nearly agreed as to its purposes and objects, and in order to bring them, if possible, into complete union, the Chair withdrew the paragraph explaining specifically what was meant by legitimate and necessary expenditure, and that was practically accepted by both parties in the issue. After a lapse of some time, it was thought that it would be better to consult the Government. The Chair demurred on the ground that the Government could not fully understand the matters at issue at this date, and that the Colombian Government had abrogated all its powers to its representatives, and to bring it in at this juncture would stultify the Commission by relegating to one of the principals the subject matter of the controversy. Your chairman will now state that he does not see any useful purpose, or that any more concrete result can be reached, by formally adjourning our meetings for a period of two months, and would very respectfully suggest that, if the representative of the Government desires to communicate with the Government, there will be ample time to do so before the close of these proceedings, and get further instructions. It seems to the chair that in the meantime we can fairly go on collecting evidence, and possibly begin to form our conclusions, and all this will take considerable time. Already about half

the time has expired, and an adjournment of the Commissioner for two months would embarrass the Commission. For that reason the chair thinks that the adjournment for two months would not be advisable, and respectfully submits this view to the Commission.

Mr. SCHRAMNE: I approve of this course. The Government has had ample time to prepare its case. When the Government sent their representative they must have given him full power to abide by the result of this arbitra-
(283) tion. Therefore, I think that the request to communicate with the Colombian Government should not be allowed officially. It would be a farce to sit here in judgment, and then consult the Government. Therefore, I fully coincide with the views of the chairman.

Mr. PENA: I vote in favor of the adjournment because it is provided for in the convention that sufficient time should be allowed within which the period stipulated by the convention for arriving at all the facts of the case, and I see no damage to either party in the delay. I am of the opinion that the more light there can be thrown on this matter the better, and as we should all be guided by the best feelings towards each othe in this arbitration, every facility should be granted on either side to arrive at a proper understanding of the situation. I therefore respectfully insist on the adjournment.

Mr. Cisneros strongly objected to the introduction of hard words against the Government of Colombia by the representatives of the Cauca Company. Mr. Stine trusted that it would not be supposed that it was his intention to hurt the feelings of any member of the commission or their principals, and if in his zeal for his case he had done so, he was very sorry for it. Apology accepted by Messrs. Pena and Cisneros.

Mr. CISNEROS: I agree with the chairman that a telegram would not be useful; it would have to be a letter in order to explain fully and obtain instructions. The suggestion of the chairman is that we go on with the case in the meantime. I see no objection to that, provided it is without prejudice, and later on, if our instructions are to retire, you will not be surprised.

Mr. ROBERTSON: I think it would be extremely unwise for us to go on with the evidence on points which are outside of the convention.

Mr. STINE: I made an offer a little time ago that, in order to give these gentlemen an opportunity, we would go ahead and produce evidence. I withdraw that offer, and insist that this Commission shall go ahead with its general sittings, and, if for any reason the other side desire to

(284) withdraw, I think it better that they should withdraw now, and I ask that we go ahead; we have nothing to do with their private communications. I ask that this Commission shall not adjourn for the purpose of allowing the other side to get instructions from the Government, especially after the representative of the Government had accepted the ruling.

THE CHAIRMAN: The chair understood that the only objection the Government had to the ruling was as regards the paragraph withdrawn. Now, some stress is laid on the the expression "balancing the accounts." The convention says that the accounts are to be audited The chair understands that the accounts are to be analyzed and arranged, and it is not possible to comply with the requirement unless the accounts are balanced.

The chair wishes to state further at this juncture: If any communication is to be made to the Government it would be unwise to submit an *ex parte* statement to the Government without accompanying it by the proper papers on the other side, because it would leave the Government in doubt. The Commission should prepare its views, but this would stultify the Commission by making the Government the real arbitrator, as stated above.

Mr. CISNEROS: It is only as regards one point; the scope of the convention.

THE CHAIRMAN: I have accepted the responsibility of acting as umpire and my rulings at this juncture are necessarily broad to obtain all the facts, and I ask you to have confidence in the final outcome of these proceedings.

After some further discussion as to communicating with the Government to ascertain their intention as to the scope of the agreement,

Mr. STINE: If this Commission is going to maintain its dignity, well and good; if it is going to depend upon the kind interpretation of the Colombian Government may put on the meaning of the convention, the sooner we know it the better. They simply say, "We do not approve of your ruling, and therefore will retire."

(285) Mr. CISNEROS: I do not consider that the powers given to me by the Government reach so far as you are now going. This is all due to the bad translation of the words "*Obras y Trabajos*," incorrectly stated as "enterprise," which is out of all reason.

Mr STINE: That matter has already been discussed.

The CHAIRMAN: The ruling on that matter has been given. The chairman has ruled that the indemnity should be for all legitimate expenses. The point before us now is on this postponement and we should give it due considera-

tion. I think it would be very unwise to appeal to the Government. If you can simply repose confidence in the Commission, I think the result will be satisfactory. There is bound to be some compromise made and that was the intention of both parties. The chair must not be drawn into anticipatory conclusions.

Mr. ROBERTSON: I suggest that, in view of the gravity of the situation, that we adjourn until the 15th July, pending the examination of the books, and that matters remain in *statuo quo* while we see if we can frame some scheme to go ahead.

The CHAIRMAN: The suggestion is a good one, although it will involve loss of time. I think it should be understood that there should be no official communication with the Colombian Government.

Mr. Schramme said that he did not see why the Commission should wait because the Government was not satisfied with the rulings.

Mr. Cisneros desired to know whether in the event of an adjournment there would be objection to his working on the books, and it was decided that there would be no objection.

Mr. STINE: Mr. Chairman, I think the adjournment would be an act of great unfairness to us. We are waiting and prepared to go on, and it is an injustice. The paper put in this morning before the chairman was an impertinent document, and would be considered so in any court of law, and the chairman should have rebuked the Government for handing it in. I think that this Commission should not adjourn until the 15th July in order to see (286) whether the other side are going on or not. We might just as well break up now and appeal to the proper quarter for our rights. We cannot be played with in this manner.

The CHAIRMAN: Your suggestion is in order, but there are difficulties in the way. It would be very unfortunate to break up the Commission, as the representatives of the Government are gentlemen of unquestioned ability and integrity, and to withdraw them and substitute others would only involve loss of time and expense without modifying the proceedings of the Commission. It would merely shift the responsibility from one set of individuals to another, and would not be retroactive, for the ruling of the chair, however, cannot be altered.

Mr. ROBERTSON: My friend said that the Government accepted the ruling. I think he meant excepted, because exception was taken on the part of the Government, and Mr. Pena filed his protest.

Mr. CISNEROS: I beg to state that I did not ask for a change of the ruling; what I said was that it went outside of the Convention, and I desire further instructions from the Government.

Mr. STINE: You have handed in a communication which asks for an adjournment, based upon impertinent grounds.

After further discussion:

The CHAIRMAN: The Colombian Government is to have all the time necessary for them to prepare their case. I would suggest that the communication of this morning be withdrawn, and that we proceed with the taking of testimony according to programme.

Mr. CISNEROS: I wish to please the chair, and withdraw the communication until the next meeting.

Mr. STINE: I object. The other side require three weeks to consider their withdrawal. I prefer greatly that they withdraw now than in three weeks' time.

After a further long discussion on the amendment, opposed by the Cauca Company and sustained by the Government:

(287) The CHAIRMAN: The Commission is under obligation to wait for the expert's report. We intended to save loss of time by taking testimony; but, if there is no testimony to offer, we should adjourn until the expert is ready.

Mr. STINE: I have no power to prevent it, but I consider it is in the highest degree unfair.

The adjournment being put to the vote, Mr. Schramme voted against and Mr. Pena for. The chairman approved of the adjournment until the 15th July, unless otherwise ordered.

It being 1:45 P. M., the meeting adjourned until a further order of the chair.

(Signed.) LEWIS M. HAUPT,
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER,
Secretary.

Tenth Session.

(288) Held at 30 Broad street on Wednesday, 21st day July, 1897, at 10 A. M.

Authorization to E. S. Barney for examination of accounts—Mr. Barney called and sworn by the Commission—Examination by the Company—Cross Examination by the Government—Presentation of his report.

Present—Commissioners, Attorneys and Counsel as before.
Mr. E. S. Barney, the expert appointed by the Commission for the examination of the books and accounts of the Cauca Co., was also in attendance.

The minutes of the meeting of the 24th May, 1st, 2nd, 3rd and 10th of June having been revised by all the members, were taken as read and approved and signed.

The Chairman called the meeting to order at 10:10 A. M., stating that the first matter before the meeting was to receive the report from the expert, who was in attendance for that purpose, and after that go on with the testimony.

The Chairman then called Mr. Barney to present his report to the Commission, and the usual oath was administered to him by the chairman.

The Secretary then read the letter of instructions given to Mr. Barney by the Chairman on June 16th, as follows:

New York, June 16th, 1897.

Edgar S. Barney, Esq.,
Accountant.

Dear Sir,—The Colombian-Cauca Commission has considered your proposition to audit and classify the accounts of the Cauca and Colombian Construction Com-
(289) panies, and to report on the same for the sum of two hundred and fifty dollars, and has accepted the same.

Please find herewith a copy of the letter of instructions according to which we desire to have your report made as nearly as may be practicable, at your earliest convenience.

Very truly yours,

LEWIS M. HAUPT,
Chairman C. C. C.

INSTRUCTIONS FOR THE ACCOUNTANT.

1. Examine the six books presented to the Commission, and verify the vouchers with the book entries.

2. Ascertain that the amounts and liquidations of each voucher are in order, not only as regards the figures, but as regards their commercial value.

3. Ascertain if all the vouchers are in proper legal form.

4. Taking the claim presented by the Cauca Company as a basis, dissect same into the following four headings:

1. Administration at New York.

2. Construction, equipment and other expenses applicable to the physical work of the railroad.

3. Salaries, traveling expenses and other payments to Messrs. Cherry and Schramme.

4. Financial operations of the Company.

5. Subdivide the first group as follows:

a1. Rent and office expenses.
a2. Salaries.
a3. Legal expenes.
a4. Traveling expenses in the U. S.
a5. General expenses.
a6. Sundries.

(290) Subdivide the second group as follows:

b1. Bills drawn by the Buenaventura office on the New York office, showing as far as possible what became of each draft.
b2. Application of the $50,000 deposit returned by the Government, as detailed as possible.
b3. Railroad Material.
b4. Sundry Supplies.
b5. Arms and explosives.
b6. Rolling stock.
b7. Bridges.
b8. Hospital and Medical Expenses.
b9. Provisions.
b10. Machinery and *tolls* not appertaining to the permanent way.
b11. Freight and Insurance.
b12. Commissions.
b13. Salaries of employees on the railroad.
b14. Sundries.

7. Subdivide the third group as follows:

c1. Payments made to Mr. James L. Cherry for sala-

ries, traveling expenses, interest, compensations, transfer of concession and sundries, including any liability the Company claim as due to him.

c2. The same as regards Mr. Christian F. Schramme.

8. Subdivide the fourth group as follows:

d1. Interest on the paid-up capital of the Company.
d2. Interest on the $264,000 bond issue.
d3. Interest on loans.
d4. Amount of paid capital which was actually received by the Company in cash.
d5. Capital not paid up.

(291) 9. The accountant may make further subdivisions should he consider it expedient for the better understanding of the accounts.

10. Take from each voucher the amounts that refer to each of the above subdivisions, and where one voucher covers several different subdivisions, take the proportional part corresponding to each.

11. Each item must be marked for reference, with the book from where taken, and the number of the respective voucher.

12. He will draw up a report on the general condition of the accounts, taking into consideration any irregularities he may find in the books or the vouchers.

13. He will pay particular attention to any vouchers not properly authenticated.

14. He will prepare a general balance sheet of the Company.

After verifying the entries of the bills drawn by Buenaventura in the New York books, he will ascertain that the amounts correspond with the cash book entries of the proceeds of such drafts and verify that said funds were employed in the construction of the road by means of the payrolls, bills for materials purchased, etc.

Ascertain the exact amount of the remittances made by the Buenaventura office to the New York office.

Ascertain from the New York books how the money for same was disposed of.

Ascertain the net proceeds from the operation of the road and note whether there is included therein the revenue derived from the section of the road between Buenaventura and Cordova.

Prepare, if possible, a detailed account of the amounts collected from the Government on account of guarantee.

(292) The CHAIRMAN: Mr. Barney, you are called upon to make report of the accounts of this Company, and submit that report to the Commission. Have you the report with you? A. The papers and report are here, and I beg to present them to the Commission.

CHAIRMAN: Q. Please state, for the benefit of the Commission, whether you are acquainted with any of the parties connected therewith, or if you are interested financially or otherwise in the subject matter of this inquiry? A. I was not acquainted with any of these gentlemen until I met them in connection with this matter, and I have no interest, financial or otherwise, in the result of the arbitration.

CHAIRMAN: Q. Will you state, for the benefit of the Commission, what are your qualifications? A. I have had to do with books for about 15 years. During that time I have kept and superintended the books of the Hebrew Technical Institute, also the accounts of the Passenger Department of the Hudson River Line of Steamers. I am connected with that Company at present, and have full charge of all the passenger account books.

CHAIRMAN: With reference to the accounts of the Cauca Co., you have examined the books, and you have understood them? A. I have examined all the books and papers that have been submitted to me, and I believe that I understood everything written therein, and my report is a correct digest of these books and vouchers.

CHAIRMAN: Gentlemen, the report of the expert is before you.

(293) It has been submitted in advance to both sides of the Commission, and it is now before the meeting for consideration.

Mr. SCHRAMME: I beg to move that the report be received and form part of the record.

Mr. ROBERTSON: Will it not be in order for counsel to examine the expert before this report be placed on record?

Mr. STINE: You can examine him if you like. I have nothing to say on the subject.

CHAIRMAN: It will be in order. The report is to be marked for identification, and after examination thereof it may be approved.

Mr. ROBERTSON: Quite so. I understand that the report will be marked now for identification, and before being approved will be subject to examination.

CHAIRMAN: Mr. Barney, will you state whether or not you found any errors or any corrections to be made as regards the book-keeping? A. There were no errors. In two or three cases there were a few mistakes that at one time had been errors, but the corrections had been made subsequently, so that the books, so far as clerical work is concerned, are correct.

Mr. ROBERTSON: Q. What particular six books did you examine in preparing your report? A. They were the Cash Book, Ledger and Journal, kept in New York to date, and the Cash Book, Ledger and Journal kept in South America up to October 31, 1893.

Q. So that there were really three different books, the Cash, Journal and Ledger, but they were divided into two parts, the first part being copies of the original copies kept in South America, and the second being original books (294) kept in New York? A. I did not find that one set was a copy of the other. They were two different sets of books, and the South American books appertain to the construction and operation together. I could not separate them then. The books are somewhat in detail; the pay-rolls are charged separately, and so forth. The New York books had nothing of that kind whatever, but they appertain more particularly to the materials purchased; the drafts drawn on New York by the Beneventura office amounting to 143,431.18, and also the accounts of Mr. Cherry and Mr. Schramme. So that I could not consider that one set of books was a copy of the other.

Q. Quite so, this was not indicated at all. Were you able from examination of the Cash Book, Journal and Ledger containing entries relative to the transactions in South America to determine just what was the cost of the construction or equipment of the Cauca Railroad after it went into the hands of the Company claimant in this proceedings?

Mr. STINE: Mr. Chairman, the report should speak for itself. If Mr. Robertson wants to examine the witness on his qualification as an expert, or how he arrived at his conclusions, I have no objections, but I think he will save time if he takes up the separate items and examines the witness on each one.

Mr. ROBERTSON: It is highly important that we should find out what the books contain, and how the expert has been able to reach certain results.

CHAIRMAN: Mr. Robertson has not had time to digest the report. The questions that he is raising are referred to in the report.

Mr. Robertson: It is important that we should get this information from the witness. (To witness:) Were you able from the examination of the Cash Book, Journal and Ledger entries relative to transactions in South Amer-
(295) ica to determine just what was the cost of construction or equipment of the Cauca Railroad after it went into the hands of the Company claimant of this proceeding? A. I would say that I could not tell the exact cost of construction.

Chairman: Q. How do you use the word construction? A. I understand it to mean what money was expended in building the road, and when I say I could not state the cost of construction, I mean that the South America books could not be separated to show what amount was spent in construction and what amount was spent on maintenance.

Mr. Robertson: Q. Then, so far as the South American transactions are concerned, you find the books in such a condition that they do not enable you to state what the cost of construction was as apart from the cost of equipment or operation? A. The two accounts were not kept separate; they were kept together as total.

Q. That is to say, there were operation expenses carried in the construction account in the same way as construction expenses were carried in the operation account? A. That is so. Both were included in the general heading in the Ledger.

Q. And it was impossible to separate them? A. Yes. There is nothing to indicate in any way the two accounts could be separated.

Q. So it would be impossible to do so without access to the original vouchers? A. I could not do anything with these books. The only way would be to have the original vouchers at hand. The pay-rolls would show what persons were employed, and whether they were employed on operation or construction.

(296) Q. It would practically mean to re-write the books then? A. Partly.

Chairman: Q. In the absense of original pay-rolls, is there any way by which that information could be obtained? A. I do not know of any. I was informed that the only person that could give me any information was a gentleman of the name of Blum, who is not here now. What information he could give me I do not know.

Mr. Robertson: Q. In your resume of these accounts relative to South America I find the item under group "2" of payment for construction $308,559.41. Does that amount include those expenses which you have not been able to

trace definitely, and which you have testified that you were not able to separate between operation and construction? A. In part, yes. Of the $308,559.41 there is part that I can trace definitely from the vouchers in New York. There is included in that amount, bills drawn from South America, $143,431.18, and deposit returned by the Government of $50,000; and as regards these two amounts, they appear on the South American books, but I cannot say how much was spent for construction and how much for operating the road, for the books do not show it.

Mr. ROBERTSON: Q. Then you do not know how the $143,431.18 bills drawn by the Buenaventura office on the New York office was expended? A. This amount appears on the cash book and the ledger of the South American office as so much money received. In addition to that, there was also money received arising from the traffic receipts. Against that there was money expended for operation and construction, the money being paid for rations and (297) to contractors, etc. The books appear to me to indicate that the money was expended properly.

Mr. Robertson objected to the witness testifying as to the proper expenditures of the money. Mr. Stine asked that the witness be allowed to finish his answer, and Mr. Robertson asked that he be not allowed to state as to whether the money was properly expended or not, as it was for the Commission to decide how the matter stood. He did not suppose that Mr. Barney proposed to pose as an expert on whether the money was expended properly or not.

CHAIRMAN: I think Mr. Barney's intention was to say that the money was properly entered on the book

Mr. BARNEY: That is so. What I meant to say was that, as far as the books were concerned, the proper entries were made.

Mr. ROBERTSON: Q. With respect to this item of $143,431.18, can you tell from the entries in the books how much of that was expended for the construction and how much for operation expenses? A. I cannot tell that from the books.

Q. Now, with respect to any moneys at all that by the South American accounts appear to have been received, can you tell which of them or to what extent they were expended separately for construction or operation expenses? A. I cannot.

Q. Is it possible, from the inspection of the books as you found them, for any expert accountant to make such a statement? A. Exactly, no, though I would like to show

you the balance sheet. I can show from that what the South American books show. There are some accounts which indicate operation, and there are some which indicate construction, and there is where the two items appear (298) together, and to give the exact statement would not be possible.

Q. Do you claim your report will enable this Commission to separate construction from maintenance expenses?

This question was objected to by Mr. Stine, who asked that it be stricken out from the record.

Mr. ROBERTSON: If the Commission please, here is an expert thoroughly qualified to examine these books, and he has made his report. Now, I assume that it is the privilege of either side to ask him to qualify his report by stating what he intends to show by the same. We are entitled to get at the scope of this report by cross-examination on it. We are not bound in any way by the special words that may be used in that report. For instance, he refers to salaries "and usual expenses," and other items of a similar nature. In this respect, of course, the report is not absolutely clear, and we cannot find out by merely reading it only exactly what it does mean.

CHAIRMAN: Perhaps the learned counsel has not had time to examine the report, but we have, and it concurs exactly with instructions given him with great perspicacity, and in my opinion the witness has fully covered in his report what this Commission desires. Unless there is any special point on which information is desired, I think the report will show us all we want to know.

Mr. ROBERTSON: I do not understand that we are bound by this report in any way.

Mr. STINE: When you are finished I wish to make some remarks on this subject.

Mr. ROBERTSON: If the witness is here to be cross examined by either side, then I take it that we can cross examine him on any point the same as any other expert in any other case, and I do not believe for one moment that (299) my learned friend will endeavor to contend that my question was not a proper one.

Mr. STINE: I withdraw my objection. I consider the question entirely improper, but I wish to save time. If I do not withdraw my objection, we shall have an endless discussion.

Question then repeated as follows:

Mr. ROBERTSON: Q. Do you claim that your report

will enable this Commission to separate construction and maintenance expenses? A. For the amount of money expended in New York, yes; for the amount expended in South America, no.

Q. Were you able to find any item expended in New York for construction account? A. Yes.

Q. To what extent? A. To the extent of $308,559.41, less $193,431.18; that is to say, to the extent of $115,128.23. These were items in construction as proved by bills, and that I classify under construction.

Mr. ROBERTSON: Q. Now you say that you classify them under construction. Did you get any information which enabled you to so classify them, or did you get information from the books? A. I took the information from the bills of materials purchased and classified them according to the best of my judgment.

Q. Do you claim to be an expert on the construction of railways, and are you able to tell what comes under construction and what comes under operation of the railway? A. In a general way, yes.

Q. Have you ever built any railways? A. I have been connnected with the building of them.

Q. Whereabouts? A. As assistant engineer on the West Shore Railroad.

(300) Q. What were your duties? A. I was Assistant Civil Engineer.

Q. I mean what duties did you have? A. I worked a transit. In addition to that work the Hudson River Line of steamers, being a transportation line, the materials used are similar to those of a railway, and, I think, I understand the nature of such materials.

Q. When you were running the transit on the West Shore were you having anything to do with construction of the road? A. Not as regards purchase of materials.

Q. Then you had nothing to do with the use of any materials? A. I did not.

Q. Did you run a transit before the road was built, or while it was building? A. During the time it was building.

Q. On a part of the line that was under construction? A. Yes, on a part of the line that was under construction.

Q. Then you had nothing else to do in connection with the road except running the transit? A. Only as Assistant Engineer.

Q. Do you mean as assistant in running the transit? A. Only as assistant of the Division Engineer. I had nothing to do with the purchasing.

Q. Is it not broadly a fact that you had nothing to do with the purchasing of the material, receiving of the material, use of the material, or with putting it in place? A. I had in putting it in place.

Q. How much did you have to do with that? A. With the laying of ties and placing of trestles, etc.

Q. Was there anything to distinguish between rails and ties that were intended to be used for original construction, and ties and rails that were intended to be used in the reparation of the road?

CHAIRMAN: Mr. Robertson, could you not abridge this (301) examination? You are using a great deal of time, and the points raised do not seem to be very material.

Mr. ROBERTSON: It seems to me to be very material to show that this witness is not in any sense such an expert that will enable him to distinguish between materials for construction and materials for reparation.

CHAIRMAN: We will concede that.

Mr. ROBERTSON: It is not conceded by the witness, because in his report he has massed together a whole lot of items.

CHAIRMAN: You can bring all that out in one question I want to save the time of the Commission.

Mr. BARNEY: When you speak of repairs, I wish to say that I classify these accounts all under the cost of construction, because I knew nothing about the fact that the road existed before. I supposed that the entire line was new and being built by the Cauca Company, and, therefore, I naturally classified all the accounts under the head of construction.

CROSS EXAMINATION BY MR. ROBERTSON CONTINUED.

Q. With such knowledge as you now possess, would you be able to show by an examination of the books what expenditures had been made for material to be used in construction, as distinct from material intended to be used for reparation of the old line of railroads? A. I find nothing in the books or vouchers that would enable me to make any such separation.

Q. So, conceding that the Company had the old road in operation some 20 kilometers in extent, and the partly constructed road, which needed repairs before the new construction was commenced, would it be possible for you by examination of the books to determine what expenses had been made in New York for material and supplies, or general expenses, on new construction, as distinct from repairs on the old road in the already completed portion of the road that had come into the hands of the Company? A. I

(302) found nothing that would enable me, or any one else, to so make such a distinction, unless outside parties could be furnished to show it. The books do not show it.

Q. Did you get information from any person while you were making up this report, intended to throw any light upon the classification of these accounts? A. I did not.

Q. So that your report reflects solely your own conclusions from your examination of the books? A. Absolutely so.

Q. Then you had nothing to do as an expert accountant with the books of the Railway Construction Company? A. I have not.

Q. Which books did you examine, the books of the Cauca Railway Co. or of the Colombian Construction and Improvement Co.? A. I do not understand exactly the difference between the two. As I understood it, the books show both companies' names for subscription on capital stock and subscription in the bonds, and my impression was that the books included the accounts of both companies.

Q. Did you make any attempt to separate the accounts of one company from the accounts of the other? A. I did not.

Q. Did you find any statement or heading in the books to the effect that the two companies were identical, or did you draw your inference from an examination of the different items? A. I found nothing to indicate that the two Companies were or were not identical. There was no statement one way or the other. I simply say that from the subscriptions to the stock and the Cauca bonds, I supposed that the accounts of both Companies were in the books.

Q Did you know whether the amounts that were paid to Mr. Cherry or Mr. Schramme as salaries were paid by one Company as distinct from the other? A. There is nothing to indicate that.

(303) Q. Is there anything to indicate whether or not their services were performed for one Company or for the other? A. There is nothing, unless this can be stated: If one Company existed to a certain time, and another after that, the amounts for salaries might be considered as belonging to one Company up to a certain time and to the other Company afterwards. There is nothing in the books that would enable me to make any such separation.

Q. Were the books themselves headed so as to inform you to which Company they belonged? A. I do not recollect the heading of the books at the present moment. I would have to refer to them to answer that.

Q. Is it not a fact that all these books were really the books of the Colombian Construction and Improvement Co. and not the books of the Cauca Co., so far as their headings would indicate? A. I cannot tell. When I examined the books I did not look at the headings, at least I do not recollect them.

Q. Are you able to swear that the report which you have offered is based upon an examination of the books of the Colombian Construction and Improvement Co.? A. I cannot say that they were books of that particular company. But they are here.

Q. Please examine and tell what they are? A. The name is given on the books kept in New York as "C. C. & I. Co."

Q. Is there not a fuller name inside?

Mr. STINE: No, there is not.

Mr. BARNEY: The only letters are C. C. & I. Co. I find nothing in the South American books that indicates to which Company they belong. The books are marked Exhibits Nos. 1, 2, 3, June 2nd, 1897, with some similar initials.

Q. So far as you are able to state, there is nothing in (304) the South American books to indicate to which company's accounts they refer? A. There is not.

Q. The New York books have no indicating marks upon them except the letters C. C. & I. Co.? A. That is all.

Q. As an accountant, if you were told that the letters C. C. & I. Co. referred to the Colombian Construction & Improvement Co., you would take the accounts within the books so lettered to be the accounts only of that Company would you not? A. Yes, without any other information.

Q. So far as you have any personal knowledge, there are no accounts in these books so lettered which you have referred to, except the accounts of the Colombian Construction and Improvement Co.? A. So far as absolute knowledge is concerned, no. It is only from indication as regards subscription to bonds that I supposed both Companies' accounts were there.

Q. Will you turn to your detailed statement and mark with your initials the particular items which you have assumed went into construction account; that is, the items expended in New York. I mean all items which you have assumed were for and that you have classified under construction? A. My answer to that question would be one of opinion on my part. I would prefer rather to give my figures.

Q. I want you to indicate to us on your detailed account by initials the items which you have assumed, either in a liberal spirit or otherwise, as belonging to construction expenses. Now, I presume you have them in detail?

CHAIRMAN: I think that would take considerable time.

Mr. ROBERTSON: If it is a long operation, we can defer it.

CHAIRMAN: The question refers to the items classified (305) under construction. If you will look at the written part of the report I believe you will find the information you require.

Mr. BARNEY: I would say that all these details are on the separate pages of the additional report.

CHAIRMAN: When Mr. Barney's examination is through you can indicate to him what you require.

Mr. ROBERTSON: Very well. (To witness:) Did you find in your examination of the South American books or New York books that the New York office had received from the South American office about $166,000 in American money? A. There was an account that I have headed "So-called Buenaventura office account," and, as I have remarked before, that refers to the sum of $166,000, which is a balance of that account. The account indicates that this office had expended that amount of money. A large amount was paid to Mr. Cherry and to Mr. Schramme, more particularly to Mr. Cherry.

Q. Assuming that the moneys that were paid to Mr. Cherry were really paid for the use of the Colombian Construction & Improvement Co.; does it then appear that all of the moneys that were sent to New York, making in the aggregate about $166,000, were received by the Colombian Construction & Improvement Co.? A Yes, I think the books indicate that.

Mr. Stine objected to the question as an improper one, and some discussion on the subject ensued.

EXAMINATION CONTINUED—MR. ROBERTSON:

Q. Did you find that the Company received certain amounts from stock subscription, and certain amounts from sale of bonds? A. I did.

Q. Will you state what the separate amounts so re- (306) ceived were? A. The subscriptions to capital stock were $213,875 in cash; subscription to capital stock credited under the head of services Mr. Stine and Mr. Calman, $500; C. F. Schramme, account of salary and construction, $2,800. As ragards bond subscription, cash indicates $108,916.74; under J. L. Cherry, $10,833 32; Calman,

$2,500; Marcus Stine, $2,500; making a total of $124,750.06.

Q. What do these items indicate as to total cash receipts of the Company from these two sources, namely, stocks and bonds? A. The two cash receipts would be $338,625.02.

Q. Now, aside from this $166,132.61, which the New York office received from the Buenaventura office, and aside from the $338,625.02, did you find anything in the books to indicate that the Colombian Construction & Improvement Co. had received any cash from other sources? A. From the New York books, no. In the South American books there was money received from the ticket account and the freight account. So far as I can see, that amount was included in the money which was sent to New York, and also in the expenses of the road, so that these three sources were all the sources which I found the Company had received money from.

Q. Do you mean to say that all the receipts which you could trace to have come to the Company's hands in South America, aside from any sum that it may have received as being part of this $338,625.02 was included in the $166,132.61 which the Buenaventura office remitted to the New York office? A. What I mean to say is, that the accounts indicate three sources of revenue, namely, stock sale, bond sale, and the receipts from freight and tickets. I am not taking into consideration the return of the deposit. This $166,132.61, the balance of the Buenaventura office account, seems to be paid out of the receipts from tickets and freight, and the proceeds of 143 thousand and some odd dollars, being bills drawn on the New York office, and from moneys returned by the Government. The South American books indicate these three receipts, and the $166,132.61 (307) must have been paid out of that. How much of this forms part of the $50,000, and how much of it was received from freight and tickets, there is nothing in the books to indicate.

Mr. STINE: Do you understand the witness to state that this $166,132.61 was remitted to New York out of the receipts made by the Railway or out of the payments made by the Government.

Mr. ROBERTSON: He does not know which.

Mr. STINE: So long as that is established it is all right.

CHAIRMAN: It is evident that the witness is unable to state the sources of these moneys.

Mr. ROBERTSON: Q. You mean to say this, I take it, that the Company in South America drew on New York for about $143,431.18; that it received from the Govern-

ment a return of $50,000 deposit; that it received also certain sums of interest; that it received further sums aggregating a considerable amount for freight and ticket receipts; and that these items which I have now enumerated constitute, so far as you know, all the sources of income of the South American end of the Company? A. Up to 1893; that is so far as I know.

Q. Therefore the remittance of $166,132.61, which was sent on from Buenaventura to the New York office, would represent the surplus above the construction, reparation and general expenses of the South American end of the Company, would it not? A. I think it would. I do not know that it was all actually sent here, but the accounts indicate that it was paid to various parties, and the accounts indicate also that it went to the Company.

Q. Then this $166,132.61 did not figure as an investment on the part of the Company.

Mr. STINE: I object to the question and ask that the witness be not examined as to whether the amount figures as an investment or not.

(308) Some discussion on the point then ensued, and the question was allowed to stand, and was repeated by the Chairman as follows:

Q. Then this $166,132.61 would not figure as an investment on the part of the Company, but, as far as you can determine from the accounts, it would appear more as a profit or a surplus?

Mr. STINE: It is a truly improper question, but go ahead, or we shall have half an hour's discussion.

A discussion then ensued as to whether the question could be answered from the books. Mr. Stine said that the books did not show whether it was an investment or not. Chairman wanted to know whether the witness could answer the question from the books only, in which case the question was in order, and Mr. Robertson said that he wished to know whether the expert considered the amount from a bookkeeper's standpoint an investment or not?

Mr. BARNEY: I should not like to answer the question unless I am allowed to explain what I mean, as the answer might be yes or no, according to the way the item is looked at.

Mr. ROBERTSON: I propose to question the witness and bring out the explanation in my own way.

CHAIRMAN: You can explain it your own way, Mr. Barney.

Mr. ROBERTSON: This is against the general rule.

CHAIRMAN: The object of the explanation is to help Mr. Barney out in answering the question.

Mr. STINE: I suggest that the Chairman ask the question himself.

CHAIRMAN: The question seems to be in proper form. I want to know whether the witness can answer it or not.

(309) Mr. BARNEY: The only reason I hesitated was that I could not say that the $166,132.61 represented profit on the account or not. The books indicate certain amounts for expenses and certain amounts for receipts. Expenses included the capital stock subscription and the bond subscription, and also the whole or a part of the $166,132.61. I did not want to say that the $166,132.61 was profit. I could not say that it was. As I understand the point of investment, I would say that the $166,132.61 was paid out to various individuals for various purposes.

Mr. ROBERTSON: Q. Assuming that it was paid to Cherry, or paid to him for the Company, and that all the other moneys went or were sent direct to the New York office and were received by the Company, is it not a fact that the $166,132.61 represents money which the Company's Buenaventura office remitted to the Company's New York office? A. Yes.

Q. Now, then, you would not mean to say that the Company invested a certain sum of money which it appears to have sent from one of its offices to another of its offices?

Mr. STINE: In order to save time I wish to say that every penny of this $166,132.61 was paid out for bills for purchases, for salaries, for repayment of loans and other payments for the benefit of the Company.

Mr. ROBERTSON: I wish my information from the witness.

Question repeated, namely:

Q. Now, then, you would not mean to say that the Company invested what it appears to have sent from one of its offices to another?

(310) Mr. BARNEY: I should say that this money was paid for salaries—

Interrupted by Mr. Robertson, who wished a categorical answer.

Mr. Stine claimed that the witness be allowed to answer the question in his own way.

After a lengthy discussion the chairman remarked that

it would be better to allow him to put the question in the following manner:

Q. Do you consider the transfer of an amount from one office to another an investment?

Mr. BARNEY: In a general way; no.

Mr. ROBERTSON: What was the total amount that you found paid by the Company to James L. Cherry?

A. $140,944.05.

Q. Does that represent everything that was paid to him, so far as the books show? A. I think it does.

Q. Was all this cash, or certain amounts credit? A. I think it included both cash and subscriptions, etc.

Q. Can you refer to any item in the books which will enable you to tell how much of that $140,944 05 was paid him in actual cash? A. I could not now. I did not keep that separate.

Q. Do the books indicate it? A. I think they do. They will show how much actual cash and what credit, both separately. I did not make the separation.

Q. So that your report does not indicate what was paid to Mr. Cherry. It only indicates the balance of the account? A. It indicates the balance of the account. It does not show the exact amount paid to him.

Q. The fact is, it represents the balance of the account between Cherry and the Company?

(311) CHAIRMAN: I do not so understand it.

Mr. BARNEY: The total debits show $263,025.37; that is the total amount due him for salaries, traveling expenses, transfer of concession, etc.; the total payments, including cash and stock, amount to $140,944.05, which leaves a balance still due to him of $122,081.32.

Q. Did you say that you could show the exact amount of cash? A. I said I could.

Q. How long would it take? A. It might take ten minutes, perhaps three-quarters of an hour.

Q. I would like it in this connection. Will you look at the books and then state how much cash was paid to Mr. Cherry and what he did get *in toto* in other values in order to leave this balance of $122,081.32 in his favor? A. I will give you the statement on that later.

Q. What did you find the amount of cash payment to Mr. C. F. Schramme? A. Total indebtedness is $68,488.99, payments $25,088.99, leaving a balance of $43,400. That indebtedness includes all that the books show due to him, including the $25,000 extra salary claimed.

Q. In the Cherry payments and Schramme payments can you indicate what was paid on account of salary and

what was paid for traveling expenses as distinct from other matters? A. If I remember rightly, I think I can in the case of Schramme. His amounts were in the main for salaries. In the case of Mr. Cherry there were lump sums and I could not separate them.

Q. Does this report show the dates of the detail payments? A. No, it does not show the dates of the details of the payments. My report in the case of Mr. Cherry and Mr. Schramme shows what salaries were due as taken from the books. I did not make a detailed statement of when the payments were made. I verified the checks canceled (312) with the accounts in the book, and saw that the totals were claimed as having been paid as indicated in the books, and in the books the dates are indicated.

Q. The detailed statements in each case contain the items of the payments which were made? A. It contains such items.

Mr. CISNEROS: Q. Can you say how much of the $166,132.61 are from revenue of the railway, namely, from ticket and freight accounts? A. No.

Mr. ROBERTSON: Q. In this total of $504,471.94, being the aggregate of the supposed payments made on account of construction, you have, if I understood you correctly, inserted expenses which, for all you know, may have been made on account of repairs or operation? A. That is so.

CROSS EXAMINATION TAKEN UP BY MR. STINE.

Q. In your report on page 11 there is a statement "Cost of operation and construction." Will you please look at that. It is made up to Oct. 31, 1891, and amounts to $551,822.69, Colombian money. Then you have an item "Receipt from operation, road tickets, merchandise and manufacturing," and you say, allowing the receipts equaled the operating expenses, it would amount to $177,959.78, leaving balance expended on construction of $373,862.91, which at the rate of exchange of 1.90 makes in American gold $196,769.91 as the balance expended on construction. Then you say "drafts on New York $143,431.18, return of the deposit of $50,000, although not all applied up to this date, making in all $193,431.18." Now you go on to state that these amounts are nearly equal and that the money was expended on construction. I presume (313) you refer to the two totals of $196,769.91 and $193,431.18. A. I meant these two amounts.

Q. Will you please explain to the Commission why you assume that the money was expended on construction in this way? A. I wanted to see if I could get something

that would show how much was spent on operation and how much on construction, and this was just an estimate that I worked out. I took the total receipt of $551,822.69, and I subtracted the $177,959.78, which was received from operation and which would leave a balance of receipts from other sources. I did this to figure out from all these books. The books seem to indicate that the exchange was somewhere about 1.90 and by reducing the balance to gold, I arrived at the $196,769.91. Then I took the $143,431.18 and also the return of $50,000 deposited, although not actually applied up to that date, and these two sums together being $193,431.18, which was very near the $196,769.91, I assumed that the money was expended on construction. Of course, as I say in my report, this is only an estimate, and can in no way be taken as positive.

Mr STINE: Q. That is all on that point. Now, on page 5 you have what you call a recapitulation which shows the items of cost of construction, interest on capital stock, interest on bonds sale, liabilities on account of bonds, 50 per cent. of sales, making a total of cost and liabilities of $935,482.14. In estimating the interest on capital stock, and the interest on bond sales, I find that your report makes a reduction on the estimate of interest on these two items as contained in the books of accounts of the Company. Is not that so? A. Not as contained in the books, as contained in the claim.

Q. Now you base that reduction on the fact that you note that the payments for subscription had not been paid in all on one day but from day to day, and you then calcu- (314) lated the interest from the date the payments were made instead of from when the subscription was due? A. No, I made the calculation of interest from the dates of subscription, and that is itemized if you will refer to page 4. I did not note that the payments had been made on different days. I allowed interest from the date of subscription, assuming that the party would have to keep the money in readiness to pay.

Q. Do you know whether the dates named are the dates of subscription or the dates of payment? A. I understand them to be dates of subscription. I took the dates from the Ledger, supposing them to be dates of subscription.

Q. Then, as a matter of fact, you mean to say that, assuming the date of subscription was Oct. 16th, 1890, you would allow interest on all the amounts subscribed for, whether paid or whether still used by the Company, would you not? A. Yes, that is so. I took the basis of date of subscription for October 15th, 1890.

Q. In examining the books of accounts, did you no-

tice whether or not the payment of $166,132.61, which has been frequently referred to in these proceedings as having been remitted from the Buenaventura to the New York office, whether or not that was paid to Mr. James L. Cherry or to Mr. James L. Cherry's agent, or to the Company direct? A. I could not tell you without referring to the Ledger.

Q. Please refresh your memory on the subject.

Mr. Barney then proceeded to examine the book for the purpose of giving the information required.

During the interval the chairman said he would like to rise to a question of privilege, and he addressed the meeting as follows:

"I would like to state to the Commission that our Government has done me the honor to select me as one of the Nicaragua Canal Commission appointed to consider this matter, and I am now in the position of one awaiting (315) orders, and may get orders to leave the country at any time. As the said Commission refers to an enterprise which involves a very large amount of capital and is also of great international interest, it is a matter which must, of course, take precedence over the present arbitration, and yet I feel bound, and should like very much to close these proceedings first. I should be very much pleased if we can go ahead with our work and expedite matters as much as possible in order that we may reach a conclusion, as I should regret to be obliged to withdraw and thus make it necesssary for my successor to begin *de novo*. It may be six or more weeks before we can be prepared to sail, by which time I trust that this arbitration may be terminated."

All the members of the Commission acquiesced therein, and were ready to expedite matters in every possible way. Mr. Stine said he proposed to introduce evidence that day that would close his case.

Mr. BARNEY: I find there was paid by the Company for engineers, $1,655.50; for office cash, $800; C. F. Schramme, $212.51; James L. Cherry, personal account, $164,297.08; for office, cash again, $1,800, and also $873.42, making a total of $169,638.51, against which there were counter charges by engineers, $1,655.50; Mr. Cherry expenses, $837.89; charged into constructfon account various items $1,012.51, making a total of $3,505.90, which is the debit side of the Ledger. This gives a balance of $166,-132.61. It will be seen that the greater part was paid to Mr. Cherry's personal account. These items are not all

taken from the Cash book direct and the Ledger, but the larger part are taken from the Journal, so that it does not indicate that the total cash was sent to New York and paid out. These are accounts journalized and posted here, which indicate that they cover a considerable period of (316) time, and they were then posted into the Ledger. This was the point I wanted to speak of before.

Q. Do the books show what these payments of $164,297.08 were for? A. The books show that. These figures indicate that the greater part were to Mr Cherry's account.

Q. I understand that. Assuming that, do the books indicate what is the payment of $164,297.08? A. As I said before, it seems to have gone to Mr. Cherry's personal account.

Mr. ROBERTSON: Q. Does it show what services he rendered for it? A. Not in that account. In my detail statement I show how much for traveling expenses, etc. What I have said is the total payment.

CHAIRMAN: Q. What did you say was the total amount paid to Mr. Cherry personally? Do the books show any addition to the $164,297.08 paid to Mr. Cherry; that there were other sums owing to him and still due to this date? A. The books indicate $122,081.32 as still due to him at this date.

Q. Do the books show that Mr. Cherry had made much advance prior to this sum having been paid to him? A. Without taking the figures, I should say that he had paid out a considerable amount of money.

Q. Will you, at the same time as you make out statement for Mr. Robertson, make us a statement of what Mr. Cherry advanced the Company for loans, etc., prior to the payment of this $164,297.08? A. I will, sir.

Mr. SCHRAMME: Q. With regard to these $166,132.61 remittances, can you give the Commission the dates they (317) were made; they were not remitted in one lump? I ask this question because it appears from Mr. Robertson's examination that this money was remitted before 1893 and forms part of the $143,000 which the Buenaventura office drew on New York, whereas it was not for this purpose. That is all I wanted to prove. A. As near as I can tell, the remittances took place between 1894 and 1896, although they were journalized and ledgerized in 1896. The Ledger dates are under the date of June, 1896; but, referring to the statements, they run back to 1894.

Mr. CISNEROS: Q. What statements? A. Statements rendered by Mr. Cherry from which the book-keeper took the accounts to post in the Ledger.

Mr. ROBERTSON: Q. Do the amounts correspond? A.

I have not gone into this very carefully; I could not make the accounts balance.

Mr. CISNEROS: Q. Why were you unable to balance them? A. The items here appear in a different form from what they appear in the Journal. They appear as totals in the Ledger here, and are itemized to a considerable extent in the statements, and I could not always make the statements agree with the total kept here.

Mr. ROBERTSON: Q. In other words, you cannot be positive that the Ledger entries were made from the statements made by Mr. Cherry or Mr. Blum? A. I could not be positive.

Mr. STINE: Q. Is there a substantial difference between the statements and the entries? A. I did not go into them enough to answer that.

(318) Mr. STINE: Q. Will you do so and see what you can make of them?

Mr. CISNEROS: I understood that Mr Barney was to take the papers, books and vouchers and let us know in his report if a satisfactory result could be arrived at. Now, we find that there are certain items which have not been checked.

Mr. STINE: Q. What did you take these entries from? A. From the Journal, Cash Book and Ledger. I accepted these figures as correct for making my report. The vouchers received, with the exception of these statements, have all been verified and checked.

Mr. ROBERTSON: By "these statements" you mean the Cherry and Blum statements you have just referred to as not having gone far enough into to reconcile them with the Journal entries?

A. That is what I said.

Mr. ROBERTSON: Q. You cannot show that you can reconcile them? A. I cannot.

CHAIRMAN: Q. For most of the items of the report you have vouchers, and you say that the only items in dispute are salaries for which there are no vouchers? A. In my classified report I have columns stating whether there are vouchers or not.

Mr. ROBERTSON: Q. The chairman has stated that you have vouchers for most of the entries that appear in your report. Do you mean most of the entries in amounts, or most of the entries of matters originating in the New York (319) office? A. I mean most of the matters originating in New York.

Q. None in South America? A. I have not.

Mr. STINE: I have no other questions to ask.

Mr. SCHRAMME: I wish to say that I may not have

given my check for my stock, but instead of that I may have applied salary in payment of stock. That comes to the same thing.

Mr. STINE: He may have rendered an account for $500, and by crediting the amount to his stock account it would simplify matters.

Mr. ROBERTSON: I say it would be stock in lieu of salary.

CHAIRMAN: Is there anything else to ask Mr. Barney?

Mr. ROBERTSON: Q. Will you kindly refer to your report and explain what stocks or bonds were issued for cash? A. The detail is on page 6 and 7 of my report.

Mr. ROBERTSON: Q. I find on page 5, to which you have referred in answer to Mr. Stine, what is called the recapitulation. In it you put cost of construction at $670,789.37. I take it you have compiled this detailed cost of construction in the same way in which you compiled the item under construction in the resume of payments, where you have put the item of construction at $308,559.41, without being able to classify or separate the items absolutely? A. I could not separate them.

Q. And when you made this recapitulation you did not understand that there were some 20 kilometers of road in actual operation on which repairs were necessary and on which material might be used? A. I knew nothing of that.

Q. Now, you have been questioned as to items appearing on page 11 of the report, that page being headed (320) "Estimates of cost of operation and construction," $551,822.69, C. C., to Oct. 31, 1893. What do you mean in the use of the word "estimates?" A. I mean that in the South American books I could not separate the construction and operation expenses, and to see if I could gain some little knowledge in that respect I made that figuring, and I called it an estimate because it is not positive evidence, as I have stated below, because I cannot say that it was absolutely so.

Q Well, in that figuring, what you intend to estimate is the actual cost of construction from your standpoint? A. Allowing that the cost of reparation was the same as receipts, I take the balance as expended on construction. It was $373,862.91 C. C., which at 90% amounts to $196,769.91, American gold.

Mr. SCHRAMME: I believe the exchange was 120 per cent. You have taken it too low.

Mr. CISNEROS: According to my average made in Barranquilla the average was 140% in 1893.

Mr. ROBERTSON: Q. You stated sometime ago, in an-

swer to a question of mine, something about liberal allowances for construction. In reaching this amount, $196,769.91 American gold, which you estimate was the cost as set forth on page 11, have you made what you call liberal allowances? A. I do not say I have or I have not. I could not answer the question.

Q. You have not excluded anything that you might have put in? A. I have excluded nothing.

Q. And you have been actuated by a liberal spirit in putting items into the construction account? In other words, you have not been critical to exclude items that appear in construction account upon the books? A. Not at all.

Mr. ROBERTSON: That is all, thank you.

(321) Mr. STINE: Q. Considering the fact, Mr. Barney, that it is only an estimate, it is not important if it is liberal or illiberal. Is not that so? A. I think not. I attach very little importance to it myself.

Mr. STINE: Q. Considering that Mr. Robertson has made some remarks as to the classification of the figures, and that the results are very close to what we make them, I wish to ask Mr. Barney whether he has ever seen me before until he came to this office in connection with this report? A. Not to my knowledge.

Q. Have you seen Mr. Schramme? A. Not to my knowledge.

Q. Nor Mr. Sidney C. Schramme? A. Not to my knowledge.

Q. Or any other officer employed by the Cauca Co.? A. I do not think that I have ever seen any of the gentlemen.

Q. Have you ever read the controversy with regard to the Company's claim? A. I have not.

Q. Not previously to your being employed on this report? A. I have not. I have never heard of it

Q. So you have no bias or interest whatever? A. No, none whatever.

Q. Do you know who recommended you to the chairman? A. I do.

Q. Who? A. It was Mr. Allison, 213 Broadway.

Q. He has no interest of any kind with the parties to this Commission? A. So far as I know, not.

Mr. ROBERTSON: Well, I am pretty certain I never met you before.

(322) CHAIRMAN: Well, gentlemen, this concludes our proceedings, and the Commission begs to thank Mr. Barney for his report and his attendance here to-day.

The secretary was instructed to hand Mr. Barney the

books and papers, together with the memorandum of th- requirements of the Commission, as referred to in the proc ceedings, and, the hour being 3:30 P. M., the meeting was adjourned until 9:30 A. M., on the following day.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Eleventh Session.

(323) Held at 30 Broad Street, New York City, on Thursday, the 22nd July, at 9:30 A. M.

Mr. C. F. Schramme recalled by the Company.

Present—Commissioners, Attorneys and Counsel as before.

The chairman called the meeting to order at 9:45 A. M., stating the proceedings had closed the day before with the examination of Mr. Barney, and that the Commission was ready to hear further evidence from the Cauca Company.

Mr. Stine asked permission to call Mr. C. F. Scramme, and objection was raised by Mr. Robertson on the part of the Government on the ground that Mr. Schramme, being a member of the Commission, could not be a witness, and on the ground that, if sworn as a witness, Mr. Scramme would, by becoming a witness, abdicate as judge or commissioner, and at his request the objection was entered on the minutes. The chair overruled the objection and allowed Mr. C. F. Schramme to give evidence. Exception by the Government. Examination taken up by Mr. Stine for the Cauca Company, after the usual oath had been administered to Mr. Schramme.

Q. Mr. Schramme, you have testified to various conversations which you had with Dr. Caro, Vice-President of the Republic of Colombia, and I am not aware whether or not you were under oath at the time you made such statements. A. I was.

Q. Very well. Please state what, if any, conversations took place between you and Dr. Caro at the time the (324) names of the commissioners who were to be appointed were first mentioned?

Mr. ROBERTSON: I object to any testimony on that point, firstly, because no statements that the Vice-President could have made could be material to the question in controversy here. Whatever the Government could do to bind itself would have to be done by public act, the conversation of officers of the Government with private individuals, unless those officers were specially authorized by act to bind the Government, are immaterial and incompetent. Also I object because it is not proper for a member of the Court to give testimony upon any point upon which he is to act or decide as one of the Judges, and I object further on the ground that no declarations on the part of the Vice-President with respect to the formation of the Tribunal can have anything to do with the subject matter of the controversy.

Mr. STINE: I desire to say that the law 41 which is in evidence gives the Vice-President power in every respect to make such a declaration; that answers one part of the objection. The right of Mr. Schramme to give evidence before the Commission has already been ruled on by the chair, and I propose to show, in response to the final objection of my learned friend, that the Vice-President was fully aware of the interest Mr. Schramme had in the controversy, and that, notwithstadding this fact, he asked Mr. Schramme so act as the Commissioner for the Cauca Company.

The chairman overruled the objection, and exception to the ruling was taken by the Government.

Mr. SCHRAMME: When the Vice-President and myself met after all efforts had failed to bring about an amicable settlement, I was summoned to the Palace to confer with (325) him; we had a lengthy conversation in which I explained the situation, and we then and there came to the conclusion that an amicable settlement would be submitted on a certain basis then drafted. After that I informed President Caro that I was an interested party, and since the Colombian Government had met us in such a liberal and fair spirit I proposed to withdraw from the Arbitration, not wishing to act as an interested party, preferring a man without bias, and not affiliated to the Cauca Company. The President said, "I wish you to stay on this Commission, and I want you to send your name in."

Mr. STINE: Please state, Mr. Schramme, whether or not the President had knowledge, and whether or not the Government had knowledge of the fact that you were financially interested in the outcome of this arbitration.

and whether or not it was known that you would be affected by any decision in favor of the Cauca Company?

The same objection on the part of the Government, and the same ruling.

A. They had full knowledge.

Q. After they had insisted that you should become a member of this Commission, was anything said whereby it was intimated or supposed that you would be biased, so far as your position was concerned?

Objection on the part of the Government on the same ground, and also because the question was leading. The question was allowed.

A. Nothing.

Q. Please look at this paper, which I now hand you, and state what it is. A. It is the rough draft that his Excellency the President and myself drew up.

Q. In whose handwriting? A. President Caro's, and interlined by the President himself.

(326) THE CHAIRMAN: Q. What is it? A. The preliminary agreement which we entered into—the Basis.

Mr. STINE: I ask that the paper be marked for identification.

The Secretary marked the paper "Exhibit No. 32, Claimant."

Objected to by Mr. Robertson on the ground of its immateriality, incompetency and irrelevancy, and on the further ground that it is particularly incompetent for the reason that it is not a signed agreement, but merely a rough draft, and it has been substituted by the final contract embodying the so-called basis of the settlement.

Mr. STINE: It is offered in evidence for the purpose of showing what was in the mind of the parties making this contract, in view of the fact that there is some doubt as to its meaning and scope.

The chair overruled the objection on the ground that it is material for the Commission to know the mind of the contracting parties leading up to the final convention. The document was received in evidence.

Exception taken on the part of the Government.

Mr. STINE: Q. Please state whether there is or is not any clause in this document which bears on the question of the scope of the inquiries of the Commission to be appointed, and, if so, give the number of the clause, read it in Spanish and translate it for the benefit of this Commission.

Objected to by Mr. Robertson on the ground that the document would speak for itself, and being in evidence in (327) its entirety, it is the only proper evidence to show what the paper contains.

THE CHAIRMAN: Would it not be better, as the document is in evidence, to let the Secretary read it in English?

Mr. STINE: I am not examining the Secretary, I am examining Mr. Schramme.

THE CHAIRMAN: It will save time; the purpose of Mr. Stine's question is merely to show what particular part is applicable to the present issue; the whole document is before us and can be placed upon the record both in Spanish and in English.

Mr. ROBERTSON: If you will permit a suggestion: I suppose that all these proceedings are in English, and, therefore, I think it will be more in order if the documents are translated as they are produced.

After some further discussion, the chair ruled that Mr. Schramme should read the document in Spanish and in English for the purpose of placing the same on record.

Mr. Schramme then read the preliminary Basis.

Mr. STINE: Q. Will you please state, as nearly as you can in the language which was used, what led up to the making and drafting of this rough draft between Mr. Caro and yourself?

Same objection and exception on the part of the Government.

A. After that Dr. Caro expressed himself as desiring to go on with an amicable arrangement of the differences between the Government and the Company. He also stated that he was desirous that all American citizens should get their rights, and he would favor all American citizens, and that the United States would find that it was the intentions of Colombia that our (328) Company should receive back every dollar that w. had honestly and legitimately expended in the enterprise, He also stated that was his intention with Mr. McConnicoe who was building the Girardot railway; that his desire was not that the American Government should say that the Government had wronged any American citizen. I expressed my gratitude at such sentiments, and answered the President that I was perfectly willing to settle on fair and equitable grounds, and all we wanted to ask was that we should be reimbursed for any outlay made, whereupon we surrendered the valuable concession that we held, although it was against the wishes of my Company, and against the

wishes of my stockholders to surrender such a concession, but inasmuch as the people of Cauca seemed to be determined to oust us, and threatened to wreck and ruin our road, I thought it would be the better and wisest course to relinquish the concession on the basis proposed by me. Thereupon, we sat down and drafted this preliminary basis as I have read to you, gentlemen. That basis was sent down to me, as soon as the secretary had put it in writing, by an adjutant of his Excellency—I think it was about nine o'clock on the same night. I corrected it in some small way, and Mr. Caro said he wanted it so amended. Thereupon, I took this down to the President the next day, and he caused a clean draft to be made out, which was the basis of the agreement.

Q. Is that the original? A. It is the original signed by the Minister of Gobierno and Mr. Cherry, and signed by me.

Q. Has a translation been offered in evidence? A. I have it here.

Mr. STINE: I offer it in evidence.

Mr. Robertson objected to it on the ground of its incompetency, irrelevancy and immateriality.

The document was accepted in evidence, and marked "Exhibit No. 33, Claimant."

(329) (The Witness:) When this document (Basis which was signed by both parties) was ready for signature, the President sent for me, and informed me that there would be a little delay in signing this Basis because the Minister of Hacienda refused to sign the contract.

Mr. STINE: Q. What was his name? A. Ruperto Ferreira. Thereupon I informed the President that I declined to have any further dealings with Mr. Ferreira, because, after one of our interviews, we had been insulted by him, and we had entirely closed the matter with him. His Excellency informed me that Mr. Ferreira would have to resign, and after that the Minister of the Government would sign this agreement in his place. He thereupon sent for the Minister of Hacienda, Mr. Ferreira, and requested him to sign the contract. He refused, and his resignation was demanded. On the night of the day of the expiration of the term of thirty days approved by law 19, Mr. Roldan, the Minister of Government, signed this document.

Q. Will you please look at these papers, and state what they are? A. These papers are contracts with wealthy people here to build the Cauca Railway and finish it under the conditions named here.

Q. Will you please state whether or not these contracts were shown to the President and to other members of the Government? A. They were, and also to the Vice-President of the Republic, and an official copy was sent to the Minister of Hacienda by the United States legation.

Mr. STEIN: I offer these papers in evidence.

Mr. Robertson proceeded to examine the same.

The CHAIRMAN: Are they copies?

WITNESS: No; they are signed by New York, Phila-
(330) delphia and Chicago people. The New York standing of the people was duly authenticated by the Colombian Consul General, Mr. Climaco Calderon.

Mr. ROBERTSON: These are objected to as incompetent, immaterial and irrelevant, and they are not of the character suggested. That is, they are not contracts on the part of anybody to do anything.

Mr. STINE: I offer them in evidence for the purpose of showing that we were in a position to carry out what we were going to do. All these people were ready, under certain conditions, to supply the money that might be necessary to complete this work under the original concession; and I desire to show, furthermore, by this witness, that the attention of the Government was called to the fact that these people were worth, in the aggregate, thirty or forty millions of dollars, and were able to carry out any promises they made.

The CHAIRMAN: The chair realizes that it is material to show that the Company was able to fulfil its engagements.

Mr. ROBERTSON: There is no evidence of that fact in these papers. Do I understand that the Commission is to accept anything that is offered without even knowing its contents?

Mr. STINE: I am undertaking to explain what I am going to show by this witness in connection with these documents.

Mr. ROBERTSON: Here we have a document which speaks for itself, and the chair admits it in evidence without having looked at it.

Mr. CISNEROS: The documents are not worth a snap of the finger.

Mr. STINE: I object to that remark on the part of Mr. Cisrenos. You have no right at this stage to make this remark; it is improper.

Mr. STINE: I wish to have the paper read.

The paper was then read.

(331) Mr. ROBERTSON: There is a paper which appears to

be signed by a host of people, many of whose signatures no one can even decipher, but there is not a particle of evidence that any one of these signers has compromised himself or agreed to do anything.

After discussion the documents were accepted in evidence and marked Exhibits 37*a*, 37*b* and 37*c*, Claimant.

Exception taken on the part of the Government.

Mr. STINE: Q. Did you see all the persons whose signatures are attached hereto? A. I saw every one of them.

Q. I am speaking of the document 37*a*. A. I saw every one of them sign it.

Q. You stated that you called the attention of the Government to that, and also to the signatures attached to Exhibits 37*b* and 37*c*. A. I filed a certified copy with the Government.

Q. Is it still on file? A. I assume so.

Q. State whether you made any representation to the Government, or its officials, or representatives, as to what you considered to be the aggregate wealth of the persons who signed those contracts?

Same objection and exception on the part of the Government.

A. I informed the President that these people, in my estimation, represented thirty millions of dollars.

Q. Please look at the paper which I now hand you. A. That paper is written in my handwriting; it is a translation of an original letter from the President to the American Minister in Bogota; the original is on file at the American Legation in Bogota.

Q. Where did you make this copy and translation? A. At the Legation in Bogota, at the request of the United States Minister.

Q. Did you read it to him? A. I did.

(332) Q. Was it for the purpose of informing him of the contents of the President's letter that you made this translation you now hold in your hand? A. Yes.

Mr. CISNEROS: Q. What date has it? A. Sopo, the 14th of January, 1896.

The document was then read by Mr. Stine, who offered it in evidence.

Mr. ROBERTSON: In view of the declaration contained in the letter that it is not to be used in any arbitration, I object to it.

Mr. STINE: I am only using it to show the history of the negotiations, and it is well understood that it shall be used in that way only.

Mr. ROBERTSON: You are offering it to prove your case, and yet it contains a clause that it is not to be so used. Its only possible relevancy depends upon the usefulness in assisting the Cauca Company to make out its case. If it is not to be used in that sense, why is it here?

Mr. Stine then quoted the paragraph in question.

Mr. Robertson withdrew that part of the objection, and stated that he objected on the ground that it was incompetent, immaterial and irrelevant.

The objection was overruled and an exception taken by the Government. The document was then accepted and marked "Ex. 38, Claimant."

Mr. STINE: Mr. Schramme, there is a reference in the letter of Dr. Caro to which I wish to call your attention and ask you a question thereon. It reads as follows: "Before leaving the city I accepted the basis of an arrangement, agreeing, in substance, to that mentioned in your note, and on the 7th inst. Mr. Canon communicatad to me an answer from Mr. Cherry of a definite character, which (333) contains some new phases, as one exacting $30,000 indemnity for the voyage which you made to Bogota. This indemnity I cannot concede, not on account of its amount, but because such a concession on the part of the Government would be tantamount to a declaration that the law has allowed damages, and because it would be prejudicial to the cause of the Government if the question is afterward settled by arbitration." Now, Mr. Schramme, was Mr. Cherry in Bogota at the time this was writen? A. We were both there.

Q. Was this claim for $30,000, to which the letter refers, made on behalf of Mr. Cherry and yourself? A. Both of us; for our trip to Bogota, our services, expenses and time lost there.

Q. Did you subsequently make another trip? A. We made another trip at a later date.

Q. During the second trip, your negotiations resulted in the convention under which the Commission is acting? A. Yes.

Q. Will you state whether or not you handed in a bill to the Company for services rendered by you in these two instances?

Same objection and exception on the part of the Government.

A. Yes.

Q. Will you state what the amount of that bill was?

Same objection; same ruling and exception.

The CHAIRMAN: A. It is a part of the claim, and the Commission has to decide on such item.

Mr. STINE: There is great relevancy in it; the question involves the question of what we shall get.

Mr. ROBERTSON: This evidence involves the question (334) of paying Mr. Cherry and Mr. Schramme for going down there, and they were interested parties.

Mr. STINE: They went as representatives of the Company.

Some discussion then ensured on this point, which was called to order by the chairman.

Mr. STINE: Q. What was your official position? A. Secretary and treasurer.

Q. Of what Company? A. The Colombian Construction & Improvement Co.

Q. And what was Mr. Cherry's official position? A. The manager of the Canca Railroad Company and president of the Colombian Construction & Improvement Company.

Q. And you were paid a salary as secretary and treasurer of th Company? A. That is right.

Q. Mr. Cherry, you stated, was manager of the Colombian Construction & Improvement Co.? A. Yes.

Q. When you went down to Colombia and were engaged on these negotiations with the Colombian Government, were your duties in relation to those negotiations the regular routine duties as secretary and treasurer of the Cauca Company and manager of the Colombian Construction & Improvement Co., respectively, or were they outside? A. They were outside.

Q. Did you go down there on behalf of these two Companies as the representatives of them to carry out particular negotiations? A. We did.

Q. Did you hand in a bill to the Company for such services for these two trips as representatives of the Company? A. I did.

Objected to by Mr. Robertson; overruled; exception.

(335) Q. What was the amount of that bill? A. $50,000; that is, $25,000 apiece, gold.

Q. Was that money paid to you? A. It was paid.

Q. By the Cauca Company? A. Yes.

Q. You received that money? A. Yes.

Mr. ROBERTSON: Q. In cash? A. In cash, and I paid Mr. Cherry the $25,000.

Mr. STINE: Q. You still retain a part of it? A. Yes, I have money left of it.

Q. Very well; that is all on that subject; will you will please look at this paper and state what it is? A. It is a power of attorney given by the Colombian Construction & Improvement Co. to James L. Cherry; a copy of the original was handed by me to the Minister of Hacienda in Bogota.

Q. You know this to be an exact correct copy?

Mr. STINE (to chairman): I find that it is not a certified copy, and I shall, with the consent of my learned friend, offer it in evidence, and will produce a copy made from the original by Mr. Ponce de Leon, whom, I believe, Mr. Cisneros knows well. In the meantime I beg to offer this copy.

Mr. Robertson objected to it on the ground of its incompetency, immaterality and irrelevancy.

Mr. STINE: The Government had full knowledge, or should have had full knowledge, of these matters; I ask to have it read, and will offer it in evidence.

Mr. Schramme then read the translation of the document.

Mr. STINE: Now, with the undertaking on my part to supply proof of the execution, I offer the document in evidence.

Mr. ROBERTSON: I object to it on the ground of its (336) immateriality, incompetency and irrelevancy, but not on the ground that it is not certified.

Accepted in evidence, and marked "Exhibit 39, Claimant."

Exception on the part of the Government.

Mr. STINE: Q. In the power of attorney from the Colombian Construction & Improvement Co., Mr. Schramme, to Mr. Cherry, which was offered in evidence, there is a reference to the existing contracts between Mr. Cherry and the Cauca Company, and between Mr. Cherry and the Colombian Construction and Improvement Co.; state whether or not any conversation took place between you and the representatives of the Colombian Government in reference to these contracts? A. Yes.

Objected to on the part of the Government on the same ground, and for the reason that whatever conversation was had was merged in the ultimate Convention.

Mr. STINE: I wish to show by this witness that the Colombian Government was aware of the existence of these contracts, and that it went into the Convention, knowing that such facts had been explained to it.

The CHAIRMAN: As it is the purpose to ascertain the full meaning and scope of the Convention, anything that will throw light on it the chair deems important, and the chair admits the power of attorney.

Exception taken on behalf of the Government.

A. When the original power of attorney was handed to the Minister of Hacienda for approval, he asked me what the contracts between Mr. Cherry and the Cauca Company and the Colombian Construction & Improvement Company meant. I informed him that they were contracts by which Cherry had to be compensated for the sale of the Concession.

(337) Q. Was that all? A. That is all.

Q. No details? A. No.

Q. Was it told to the Minister of Hacienda before the present Convention was signed? A. Before the Convention was signed.

Mr. ROBERTSON: Q. Yet no mention was made of it in the Convention? A. No.

Mr. STINE: Q. Please look at this paper and state what it is? A. It is the balance sheet of the Company in September, 1895.

The CHAIRMAN: Q. What Company? A. The Cauca Company—that is to say, the Colombian Construction & Improvement Co.

Mr. ROBERTSON: Now, which Company is it? A. The Colombian Construction & Improvement Company.

Mr. STINE: I offer it in evidence.

Objected to on behalf of the Government on the ground of its immateriality, incompetency, and irrelevancy.

The CHAIRMAN: I will admit it in evidence.

Document marked "Exhibit 40, Claimant."

Exception by Government.

Mr. STINE: Q. I hand you this paper, which you state is the balance sheet of September, 1895; did you have that balance sheet with you in Bogota? A. I did.

Q. What time? A. Both times: in '95 to '96 and in '96 to '97.

(338) Q. Did you submit this balance sheet of Septem- 1895, to the Government ?

Same objection; same rulling and exception.

A. I did.

Q. Under what circumstances did you do so ?

Same objection; same ruling and exception.

A. In order to refute attacks in the papers that we had not expended a cent, and in order to give the Government an idea of what they had to pay according to our books.

Q. I notice here on the debit side items; J. Eppinger, $833.31; W. J. English, $6,366.67; what are those two items?

Same objection; same ruling and exception.

A. They are items still due the Company as balance.

Q. I notice on the construction account $782,330.14 on the debit side; what does that account represent? A. That was the balance due in '95 on the construction account, or, in other words, the money which had been expended up to that time.

Same objection; same ruling and exception.

Q. Now, on the credit side of this balance sheet I find $243,875, stock subscription, and $264,500, bond subscription; that stock represents what? A. It represents the money paid in, and the bonds which reprepresents the amount owing by the Company still outstanding.

Q. What is the item, F. Wilson, $200? A. That is the amount due Mr. Wilson not paid yet.

Q. There is an account, J. L. Cherry, loan, amounting to $1,062.67? A. Money loaned the Company by him.

Q. Then I find J. L. Cherry, $195,856.58, personal ac-
(339) count? A. Money due Mr. Cherry for salaries and other things.

Q. I find C. F Schramme, $19,225? A. That was due Mr. Schramme at the time.

Q. I find legal services, $10,000, due Messrs. Stien & Calman? That amount was not included in the claim presented by the Company; it is an obligation of the Company.

Q. What was the nature of these services? A. Advice and work for six or seven years.

Q. I think you are a little mistaken. A. No, I am not; I mean the organization, traveling expenses to Virginia, drawing up bonds, certificates, etc.

Mr. ROBERTSON: Q. Is that not in addition to the $8,000 already paid to them? A. Yes.

Mr. STIEN: Q. State to the Commisson why this amount was not included in the claim? A. Because Mr. Stien especially wished to prevent any claim which was not a direct obligation of the Company.

Q. It had been entered on the books? A. Subsequently.

Q. At the time when you presented the claim? A. It was not in the books, and for that reason Mr. Stien would not have it entered in the claim.

Q. Next item is $55,112.68, interest account? A. That is interest accruing on the bonds.

Q. On the bonds alone? A. Yes.

Q. Will you explain the apparent discrepancy between the amount of $799,831.93, as set forth in this balance sheet of 1895, which you say was submitted to the Colombian Government, and the amount of $963,000.00, as in the claim before this Commission?

(340) Same objection on the part of the Government; same ruling and exception.

A. In the first place, there are expenses from Sept., '95, to Jan., '97, for supplies, etc., there were cars and materials sent out; secondly, there were salaries and other expenses; also expenses incurred in Bogota, $50,000, and other traveling expenses, and expenses of lawyers, etc., in Bogota.

Q. When this claim was handed in to the Colombian Government, as you have stated, prior to this convention, was any objection made to the items which are here contained by any representative of the Government? A. None whatever.

Same objection on the part of the Government; same ruling and exception.

Q. They at no time refused to acknowledge that if the claim was to be paid at all, that any of these items were objectionable? A. Never made any objection.

Q. This balance sheet was put on file with the Government? A. With the Secretary of Hacienda.

Q. And is still on file with him? A. Yes.

Mr. ROBERTSON: Q. They never admitted these items, did they? A. No.

Mr. STINE: Q. You mean to say they neither admittedthem nor rejected them? A. That is so.

Q. I hand you Exhibit No. 31, which is the inventory, and I call your attention to the page headed "Via Ferrea de Buenaventura a Cordoba y Cordoba a San Jose;" please look at that, and state what that page contains? A. That page says that we delivered to the Gov-
(341) ernment a line from Buenaventura to Cordova, K.20.240; that we delivered also a line from Cordova to San Jose, K.16.500, making a total of K.36.740. The report says that this line was delivered in good condition, but, to avoid accidents, some repairs will be advisable—certain repairs should be done at once, and they are set forth in a special report herewith. On account of the special condition of this region, the constant ballasting of the way cannot be abandoned for one moment with the proper material, attending first to those points where defects are noticeable. Besides, it is necessary always the mathematical centre of the curves, in order to smooth down the track and avoid the wear and tear of the rolling stock. The Commission takes pleasure in acknowleding that the line has improved noticeably with the change of rails of heavier weight made by the present administration. From San Jose to Catanga there are seven kilometers of roadbed in good condition, but with various interruptions.

Mr. STINE: Q. Mr. Schramme, did you see the line before it was turned over to the Government? A. The present line?

Q. From Buenaventura to San Jose? A. I saw it in 1892; not since then.

Q. When? A. In the month of May or June.

Q. You have not seen the line since? A. No.

Q. In connection with this exhibit, already in, I wish to show these papers to the witness. What are these papers? A. They are copies of the certificates of accounts of delivering over to the Government a kilometer when completed, and stating the measurement by the Government measurer.

Q. Are these papers which you have just examined originals? Please translate them. A. There are copies
(342) compared by me with the originals at the time.

The documents were then handed to the secretary who translated same into English and read them to the Commission.

Mr. STINE: I then offer these papers in evidence. The papers were accepted and marked "Exhibits 41 and 42, Claimant."

It being 1:25 P. M., the Commission then adjourned for lunch.

Proceeding were recommenced at 2:15 P. M.

EXAMINATION TAKEN UP BY MR. STINE:

Q. Please look at this paper and state what it is? A. It is the release from the Colombian Construction and Improvement Company—release to the Cauca Company and the Colombian Government.

Mr. STINE (to the chairman): Do you wish it read?
CHAIRMAN: Yes, please.

The secretary then read the release. The document was offered in evidence and objected to on the part of the Government on the same grounds expressed in the previous objection. The document was, however, accepted and marked "Exhibit No. 43, Claimant."

MR. STINE: Q. Please look at this paper and state what it is? A. It is the original copy of the Convention entered into between the Cauca Company and the Colombian Government.

Q Is it the original? A. It is an authenticated copy.

Q. Is it not the original Convention?

(343) The legal customs of Colombia were then explained with regard to a document made "*Escritura Publica*," and the document recognized as authentic.

Mr. STINE: I offer the same in evidence.

Mr. Robertson reserved the right to examine the same and ascertain whether it was the original text. The document was accepted and marked "Exhibit 44, Claimant."

Mr. STINE: Q. Please look at this paper and state what it is? A. It is the certificate of registration in Bogota of the transfer from James L. Cherry to the Cauca Comyany of contract No. 20, 1890.

Mr. Cisneros remarked that he thought Mr. Schramme had testified at a previeus meeting that the transfer of the contract was made to the Colombian Construction and Improvement Company. This, however, was contradicted by Mr. Stine. The document was offered in evidence and accepted and marked "Exhibit No. 45, Claimant."

Mr. Robertson reserved the right to examine the same and objected thereto.

Mr. STINE: Q. Please look at these papers? A. This is the original Concession as granted to Mr. James L. Cherry, signed by the President of Colombia and Mr. Fereira, the then Minister of Fomento. This (second docu-

ment referred to) is the extension granted in 1892, extending the contract for two years, signed by the attorney of the Company, Mr. Victor Mallarino, and by the Vice-President of the Republic, Mr. M. A. Caro, and also by the Minister of Fomento, Jose Manuel Goenaga.

The documents were offered in evidence and accepted and marked Exhibits "46 and 46*a*, Claimant."

(344) Mr. Robertson reserved the right to examine the document in view of Mr. Schramme's statement that it did not conform exactly with the official copy of the "Diario Oficial" containing the contract.

Mr. STINE: Please look at this paper and state what it is. A. It is the certificate of the incorporation of the Cauca Company, incorporated in West Virginia.

Document was then handed to Mr. Robertson for examination.

The charter was offered in evidence, and marked "Exhibit No. 47, Claimant."

Mr. Stine offered in evidence the certificate of incorporation of the Colombian Construction & Improvement Company, which was marked "Exhibit No. 48, Claimant." It was objected to by Mr Robertson on the grounds of incompetency, irrelevancy and immateriality.

The Government agreed to concede that the Cauca Company duly appointed and authorized Mr. Schramme to act as Commissioner in its interest in these proceedings.

Q. Mr. Schramme, have you of late had charge of all the documents and papers of the Cauco Company as well as the Colombian Construction & Improvement Company? A. Of late, yes.

Mr. STINE (to the chairman): Mr. Schramme has had charge of the different papers and the original contract between Cherry and the Cauca Company, and I want to produce a copy of the minute book in order to prove the same in the absence of the original document, which could not be found.

Q. Mr. Schramme, I have here the minute book of the (345) stockholders of the Cauca Company from December, 1890, to date.

Mr. ROBERTSON: Is it not the minute book of Directors' meeting.

Mr. SCHRAMME: No; of stockholders.

Mr. Robertson then stated that the Government did not object to the minute book of the stockholders because of its being introduced for the purpose of showing this original contract between the Cauca Company and Mr. James L. Cherry, the witness having sworn to this book; but the Government objects to the paper itself on account of incompetency, immateriality and irrelevancy.

Mr. STINE: Q. Please examine the book before you, on the pages 6 and 8, where you note there is a statement purporting to be an agreement between James L. Cherry and the Cauca Company, dated November 29, 1890? A. There is.

Q. Please state when that was entered. A. It was about the 29th day of November, 1890.

Q. In other words, at the time the contract was made? A. Yes.

Q. Will you please look at this, what purports to be an agreement between Mr. Cherry and the Cauca Company, and state whether, to your knowledge, that is a copy of the original contract? A. It is a copy of the original contract, to my knowledge, because I compared them.

That is all. Now, I offer in evidence the agreement itself as contained in the minutes of the stockholders' meeting.

The same was received and marked "Exhibit No. 4 . Claimant," subject to the Government's objection and e - ception.

(346) Mr. Robertson called the attention of the Chair to the fact that this paper purported to be an assignment of the concession to the Cauca Company by Cherry, but in the same paper there appears to be an assignment by the Cauca Company to the said Cherry of every possible benefit, leaving to the Cauca Company all the obligations and the doing of the work.

Mr. STINE: Q. Mr. Schramme, please look at this paper. What is it? A. This paper is the contract between James L. Cherry and the Colombian Construction and Improvement Company.

Mr. ROBERTSON: I object on the grounds of incompetency, irrelevancy, and immateriality, and on the grounds that there is no proof that the learned attorney Calman was authorized to sign for Cherry.

It was offered in evidence, subject to the formal proof of the execution of the power of attorney from Cherry to

Calman. The document was then read and offered in evidence, "Exhibit 50, Claimant."

Mr. Robertson called the attention of the Chair to the fact that it was an optional contract for the payment of a certain amount in cash or bonds, and that there is no proof in the case that the option to take cash has ever been exercised.

The CHAIRMAN: Mr. Pena makes a request for the original copy of the contract between Mr. Cherry and the Cauca Company.

Mr. Stine stated that he would produce the same.

Mr. STINE: Q. Mr. Schramme, there is an option of Mr. Cherry referred to in this contract which has just been admitted in evidence, giving him the right to take stock or (347) bonds under certain conditions. As a matter of fact, was that option exercised?

Objected to on the part of the Government.

A. It was exercised.

Q. Please state in what manner?

Same objection on the part of the Government.

A. He demanded the cash payment of $135,000.

Q. Was any cash under that original contract, and in conformity with the contract, paid to him? A. The $166,132.61, or the principal portion, went towards his account. His account were credited with $135,000 in November, 1894, and any payments received from Buenaventura by way of remittances were credited to his account. A portion as regards the $135,000 and the other for salaries, expenses, etc.

Q. Do you know, as matter of fact, how much the indebtedness of Mr. Cherry of $135,000 has been reduced?

Objection on the part of the Government.

A. There stands now to his credit about $122,000.

Q. Now, Mr. Schramme, please look at this copy of the account (Company's claim), which has already been introduced in evidence.

The SECRETARY: It has not been marked yet as an exhibit.

Mr. Stine to witness.

Q. You have examined this account, have you not? A. I have.

Q. Was it made up under your supervision? A. It was.

Q. Did you compare the various items contained in the account with the original claim? A. I did.

(348) Q. Did they tally. A. They did.

Q. As a matter of fact, do you know, of your own knowledge, whether or not the books, as offered in evidence, are an absolute truthful and faithful history of the accounts of the Cauca Company and of the Colombian Construction and Improvement Company, as they pretend to be? A. They are.

Q. Are there any statements of accounts in these books which are in any particular untruthful or unfaithful? A. There are none.

Q. Were the entries in that book made from time to time chronologically, as the occasion for the same arose? A. They were made from time to time.

Q. I notice frequently that there occurred the items "James L. Cherry, salary 1894; C. F. Schramme, salary," and the same thing in 1895 and 1896. Were these salaries paid to you in due course?

Objected to on the part of the Government.

Q. I see here items of office expenses and stationery, etc. Were these incurred in the use of the supervision? A. Yes.

Q. All of them, and paid out of Petty Cash? A. Yes.

Q. I see items to Motley & Company, etc., what are they? A. Supplies paid by check.

Q. I see also freight, explosives, stationery, materials, consul fees, etc. What are they? A. They were all paid by checks.

Q. I notice a number of items, such as traveling expenses, as per voucher, to Cherry and Schramme—please state what they are.

These items were objected to in themselves, and because they could not even be claimed against the Company (349) unless authorized by the minutes.

Mr. STINE: It is not at all necessary—the vouchers are here. It is not at all necessary that the traveling expenses be allowed in the minute book.

Mr. Robertson contending on the latter of his objections, that the authorization of the minute book was necessary, the chairman said:

The question is one of order of procedure. It is understood that these negotiations are between the Government and the Company, and not between the Government and an individual. It is understood that there must be some authorization on the minutes that the expenditure was authorized.

Mr. ROBERTSON; Q. Who drew the checks? (Mr. Schramme:) A. The money is still owing.

Mr. ROBERTSON: I see it turns out that they are not paid—if they had been paid, the payment would have been a proof of approbation.

Mr. STINE: Q. When these statements of traveling expenses occurred, were they repaid to you?

Objected to by Mr. Robertson, who said: The Chairman has made a ruling that there must be a proof—let us have the check book.

The CHAIRMAN: It must be on record that the expenses were duly authorized.

Mr. ROBERTSON: Q. Were the checks drawn by the treasurer? (Mr. Schramme:) A. Yes.

Q. And countersigned by the secretary? A. Oh, no: only by one officer.

(350) Q. And who was that officer? A. I was.

Mr. ROBERTSON: I see, that makes an additional reason.

Mr. STINE: Q. I will leave that for the present. I find interest on capital stock paid in $250,000, amounting at 6 per cent. for six years, five months and nineteen days to $97,041.66. Will you please state whether you have made the calculations? A. I have.

Objected to by Mr. Robertson.

Q. Does that agree with the calculation made by Mr. Barney? It does not, because Mr. Barney does not calculate interest on the payments of stock for the concession, $30,000.

Q. Is it not a fact that the Cherry estate still possesses that stock? A. Of course.

Q. If the Company recovers, will not the Company be obliged to pay his share?

Objected to by Mr. Robertson, who said that that was a legal question which could only be arrived at by looking into the matter. There is nothing before the Commission to prove this, and Mr. Schramme could not swear as to the

effect of this contract. It is a question for the Commission.

Mr. STINE: Mr. Chairman, the fact of the matter is that there is not a single stockholder of that Company who would not be entitled to the legal proportion on his bonds.

The CHAIRMAN: This is a question which the Commission will consider and decide on.

Mr. STINE: Q. Mr. Schramme, do you know any of (351) the stockholders of this Company? A. I do.

Q. Is the Cherry estate a holder of stock of this Company? A. It is.

Q. How much? About 1,400 shares.

Q. Is this the stock that was given to Cherry at the time he transferred the contract that he made with the Cauca Company or Colombian Construction and Improvement Co? A. It is part of it.

Q. In any division of the assets among the stock and bondholders, is it not a fact that every stock and bondholder would be entitled to his proportion? A. I propose to leave for the Commission to decide whether or not that interest be allowed to that amount. The fact is that it will have to be paid by the Company.

Mr. STINE: I find interest on bonds $264,500 for four years, one month and three day, samounting to $64,934.75. Is that the interest due on these outstanding bonds?

Objection on the part of the Government.

A. Yes.

Q. Is there any balance between that figure and the figure given by Mr. Barney? A. I daresay there may be some slight discrepancy, owing to Mr. Barney not having been acquainted with the fact that the interest became due from the time of issue.

A book of bond certificates was here produced, and a blank certificate handed to the chairman for inspection.

Q. Please state at what price these bond certificates were sold.

Same objection on the part of the Goverment.

(352) A. They were sold at fifty cents on the dollar

Q. Amounting to $132.250?

Same objection on the part of the Government.

A. Yes.

Q. So that there is due to the present bond certificate holders on that sale?

Same objection on the part of the Government.

A. $132,250.

A blank certificate was then offered in evidence as to the form of the certificate, and exception taken on the part of the Government. The blank form was admitted, and marked "Exhibit No. 51, Claimant."

Q. In making up this claim as presented to the Commission, is it not a fact that interest or expenses which may accrue since April must be added to this claim, so as to bring it down to the day that payment was to be made by the Colombian Government? A. Yes.

Q. Now, Mr. Schramme, will you please look at the books that you have before you, and state what they are? A. I have the minute book of the Directors of the Colombian Construction and Improvement Company.

Q. Will you state whether that is a true and faithful account of the statements of the proceedings of the Directors of that Company? A. It is a true and faithful statement of all the proceedings.

Mr. STINE: I offer it in evidence.

Objected to by the Government on the grounds of its incompetency, immateriality and irrelevancy, and that it cannot be offered in bulk.

(353) Mr. STINE: Well, I will not offer it in evidence. I will submit it for inspection to the Commission or the Counsel for the Government, and request that they examine as to its contents.

The CHAIRMAN: I think there are matters in that book which the Commissioners should know.

Mr. STINE: I offer to do the same with the Directors' and with the Stockholders' minutes of the Cauca Company to the Convention on which we are acting, so that the Commissioners shall examine all the papers they deem necessary.

The chairman made a formal request for the books.

Mr. STINE: The Convention says the books and accounts shall be examined.

Mr. ROBERTSON: Will you please observe, Mr. Stine, that I have not made any objection to anything that the Commission cares to ask for?

Mr. STINE: That is quite so. Now that the Commis-

sion has called for them, I ask that they be accepted in evidence.

The CHAIRMAN: Until we have examined their contents they will be accepted provisionally; to-morrow we shall have to look at them.

Mr. Schramme called attention to the importance of the books and asked that they be put in charge of somebody.

Mr. Robertson declined the responsibility of taking them out of the office.

Mr. Stine asked that the meeting be adjourned until to-morrow, for the purpose of going into the authorization of travelling expenses.

Mr. ROBERTSON: I assume that if the authorization for the expenses is not in the minutes, you will not be allowed to prove them.

Mr. STINE: I will not admit that.

The CHAIRMAN: The Commission is willing that the Chairman examine the minutes and ascertain whether there is any official authorization for the payment of trav-
(354) eling expenses, and it becomes important in the view of the Commission that these payments should be proven, provided they are authorized, and proof may be offered hereafter.

The CHAIRMAN: Is there anything else before the meeting to-day, gentlemen?

The meeting then adjourned until Monday, at two o'clock P. M., for the purpose of receiving the testimony of Mr. Luther McKinney, ex-Minister of the United States in Bogota.

(Signed.) LEWIS H. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Twelfth Session.

(355) Held at 30 Broad street, on Monday, July 26, 1897, at 2 P. M.

Mr. L. F. McKinney, called and sworn on behalf of the Company—Cross-examination by the Government—Supplementary Report of Mr E. S. Barney.

Present: Commissioners, Attorneys and Counsellors as before.

The Chairman called the meeting to order at 2:10 P. M., stating that the meeting had been called for the purpose of listening to the evidence to the Ex-Minister to Colombia from the United States.

Mr. McKINNEY was then called and the usual oath of affirmation was administered by the Chairman.

EXAMINATION TAKEN UP BY MR. STINE FOR THE CAUCA COMPANY.

Q. What is your name. A. Luther F. McKinney.

Q. What have you been engaged in during the last four years? Namely, what was your occupation? A. I have been United States Minister in Colombia since 1893.

Q. Up to what date? A. March, 1897.

Q. During that time were the controversies and differences between the Government of Colombia and the Cauca Company brought to your attention? A. They were.

Q. Were you familiar with them? A. I think I may (356) say I was.

Q. Will you be kind enough to state what happened from the beginning until the conclusion of these negotiations, and also state what conversations, if any, took place between you and the authorities of Colombia.

Mr. ROBERTSON: I object to that on the ground of its immateriality, incompetency and irrelevancy, and on the ground that whatever compromises were made between the parties to the controversies were merged in the final convention and agreement by which this tribunal was authorized.

The CHAIRMAN: The Chair has already ruled that we want all the light we can get on the subject, and the evidence will, therefore, be admitted.

Exception taken on the part of the Government.

Mr. McKINNEY: Well, gentlemen, some time after my arrival in Bogota—I do not remember the exact date—the

first official relations I had with the Government of Colombia in this matter was a dispatch which I received from the Secretary of State, Mr. Gresham, which I think was written about the 13th day of February, 1894. May I ask whether the revolution was in 1894 or 1895?

By Mr. CISNEROS: 1895.

Mr. MCKINNEY: I will correct my statement, then. It was in 1895, and I did not receive the communication until May. In that communication Mr. Gresham instructed me, and went fully into the matter of the Cauca Company, the Government having declared the nullity of the contract; and that it appeared to him that the action of the Government might be a cause for diplomatic action, and that I should inform the Government of the opinion of the Secretary of State, and, if the Government so requested it, forward them a copy of the letter. I wrote (357) a dispatch to the Government giving such information, and, in order that there might be no misunderstanding in the matter, I sent them a copy of the letter referred to. After that, in the month of October, 1895, I was informed that the Government confirmed the canceling of the contract, and had instructed Mr. Cherry to appear within thirty days to make a settlement and arrange with the Government. At the same time I received a cablegram from Mr. Olney, the then Secretary of State, in which he informed me that the Government had cancelled the contract, as he deemed it, improperly, and that I was to give Mr. Cherry and his railroad full protection in their negotiations with the Government, and ask them to grant thirty days, or such time as was necessary. In the meantime, I telegraphed the Department that it was necessary that Mr. Cherry should come as soon as possible, and received a reply that he should sail by the next boat. At once I requested the Government to grant such time as was necessary for him to arrive, it being impossible for him to come within the thirty days allowed, and the time was granted. In December Mr. Cherry and Mr. Schramme arrived in Bogota. We then entered into what we deemed an amicable arrangement. We did not succeed very well for some time, and at last took the matter to President Caro, and made propositions to him for a temporary settlement of the claim until Congress met and took action, as the Government claimed that it was impossible for them to take action until Congress had met. I made propositions to the President for a temporary settlment of the matters in dispute, the matter to remain in *statu quo*, each party holding their rights under the contract until Congress met and took action. The President accepted

the proposition with one exception, which we immediately conceded. I think that happened about the 26th of January, 1896. I may not be correct in my date, because I have no data before me. Then Mr. Cherry and Mr. Schramme returned home with the understanding that they were to return after Congress had met. They returned in the middle of August, 1896. Congress was then (358) in session. Immediately I, acting for an amicable settlement of the matter, and, it being understood that we were trying for an amicable settlement, I proceeded on good terms to talk matters over with the Government, and we went to work in the meantime so as to have some basis to act on. At last Congress passed a law in regard to the railroad, in which they gave certain terms on which a settlement could be made, and so forth, and at that time Mr. Cherry declined to proceed further with the settlement, and came to my office and said that he turned over the whole matter into my hands, and said that he would have no further communication with the Government on the subject, except through me; that the matter will be diplomatic from there on. I told him I had no objection, provided I could have charge of the matter; of course, consulting with him in regard to his interest. I then objected to and declined to accept the terms of the bill passed by Congress. I claimed that it was a violation of the contract which had been made between Mr. Cherry and the Colombian Government, and that I would not accede to the terms of the act of Congress, claiming that Congress itself had no right to change the terms of the act of 1890. This went along for some time. I had frequent communications with the President and the Minister of Foreign Affairs, and the President said he wished to settle the matmer amicably. He desired no diplomatic difficulty in the matter. He said the proper channel was through the Minister of Hacienda, and he urged very strongly that settlement be made through that channel, if possible. The Government asked for propositions, and propositions were made. I had two meetings with the Minister of Hacienda, and at the last meeting they had given us a counter proposition which was practically on the lines of the proposition that this Commission now meets on, but it was not such a propersition that I then thought we could accept, as it was not such a proposition that I thought would leave us in a position to perhaps get what we thought we ought to have. Our meeting was not a very pleas- (359) ant one, and I then went to the Minister of Foreign Affairs. I told him that he must proceed to organize a Board of Arbitration in accordance with Article 37 of the

contract of 1890; or, if the Government at any time was ready to accept my services, I should be happy to arrange an amicable settlement through the Minister of Foreign Affairs and the President, or else we must submit the matter to a Board of Arbitration. We had a good deal of communication in the matter, the Minister of Hacienda writing long dispatches to Mr. Cherry, Mr. Cherry handing the dispatches over to me, and I replied in some cases. I did not reply to all letters, because I did not deem them applicable to the subject in question. After a time I told the Minister that it was a question of diplomacy. They insisted to the contrary. I insisted that it was not my business; that I had instructions to do so from Washington, and had to obey orders; it had then become a diplomatic question, and I had been instructed by my Government to proceed to form a Board of Arbitration, and I told the Minister that I could do nothing more. There was some further conversation, perhaps not necessary to state here. I understand that he immediately communicated with the President, and told him that it was going to become a diplomatic question, which he did not desire, and he requested the President to take some action for the settlement of the matter. That is what I understand. Anyhow, immediately after that—I think the same day, perhaps the same night—it was within twenty-four hours after my complaint—that the President sent for Mr. Schramme to go to the Executive mansion. Mr. Schramme went to the Executive mansion, and after an interview with President Caro he and Mr. Cherry went to my Legation.

Mr. ROBERTSON: Q. Were you present at the interview with the President? A. I was not. They came to my Legation and told me that the President had accepted (360) practically the proposition which I had made to them, and that you are now considering here, and told me what was in the proposition, although it was not then in writing. Mr. Cherry and Mr. Schramme said that as the case had been left in my hands, they did not propose to take it out of my hands unless I wished. During my frequent interviews with President Caro, he had expressed such an earnest desire to settle the matter amicably, and that he was ready to settle with the Concessionary, and I therefore advised them that if the proposition was a proper proposition, in accordance with their views, that I should prefer that they would settle with the President rather than make it a matter for diplomatic action, and I asked them to submit the question to me when the writing was made out. On these grounds they went on with the propositions until the first proposition was written out; that is, a draft

thereof. It was submitted to me, and I examined it very thoroughly. I also submitted it to parties who were conversant with the Spanish language, not being a sufficient Spanish scholar myself. I also submitted it to my secretary, Mr. Sleeper, and another American gentleman, who is a thorough Spanish scholar, in order to be sure that the basis was all right. The final papers were not made out and signed before I left. That, gentlemen, is as far as I can go in my general statement.

Mr. STINE: That is all right. Mr. McKinney, you have spoken about various interviews you had with President Caro. Will you please state as fully as possible the exact language that both you and he used in reference to the subject matter discussed, which made up and was the basis for the making of the final convention under which this Commission was appointed.

Same objection on the part of the Government.

Mr. MCKINNEY: I will make this statement: I may say that I cannot make my statement clearer, unless I (361) state the fact that there were several propositions made to the Government, several different propositions, giving the Government the option to settle this proposition, re-written by own hand on the typewriter. I will testify that I wrote that myself. They were copies of what I sent to the Government. The first proposition was the one you are now considering, namely, that a Commission of three be appointed to examine the books, vouchers, etc., of the Cauca Co. in New York, and ascertain the exact amount of expenses and obligations incurred by the Cauca Company in the enterprise, the award of such Commission to be final, and such award to be paid in sixty days in gold or its equivalent in Colombian currency, with a reduction of five per cent., if payment is made in gold exchange; that is the equivalent of $600,000 gold, if paid in paper money, but if in gold, they shall have a discount of five per cent.

Mr. ROBERTSON: Do I understand you to say that you advised the Company to accept $600,000?

Mr. MCKINNEY: I did not mean to put in the statement about the $600,000; it has nothing to do with the first proposition. It is the second proposition, which is as follows: A settlement by the payment of the equivalent of $600,000 gold, national currency, for the recission of the contract and transfer of all the property, etc. If the payment be made in gold exchange, the Government to be granted a reduction of five per cent. The third proposition, $38,000 in gold per kilometer for 10½ kilometers, and

all interest on the money due to date to be paid as above, the road to be transferred to the Government on this payment; a Commission of three to decide the question whether under the contract the Government is obliged to pay for the six kilometers in dispute. If the decision be in the affirmative, the Government to pay the equivalent of $38,000 gold per kilometer within sixty days after the decision. If in the negative, then a Committee of three Engineers to decide what amount the Cauca Company is entitled to for the work on the said kilometers; also for work (362) on the first seven kilometers beyond San Jose. It was also to decide the value of the improvement of the road from Buenaventura to Cordova and the value of the surveys to Cali, and the award of such Committee of Engineers to be final, and the same to be a first lien on the road until paid; the last three items, therefore, to be independent of the six kilometers in dispute, and to be valued and paid for—

Mr. ROBERTSON: Q. Are these the four different propositions? A. Yes, they are alternative propositions. They were all handed in together. The fourth is; the Government to pay $38,000 per kilometer for sixteen and one-half kilometers from Cordova to San Jose, and the possession of the road to be then turned over to the Goverment, but the Government to give the contract for building and grading the first seven kilometers beyond San Jose, including the steel bridge over the river Dagua for $30,000 gold per kilometer, the seven kilometers to be ready for traffic within eight months from the date the contract is executed, except in the case of *caso fortuito* or *Force majeure*, the existing road to be operated by the contractors at their own expense, and the road to be delivered at the end of the contract in as good condition as when received by the contractors; the contractors to add at their own expense one thirty-ton Baldwin locomotive and six new freight cars. Fifty per cent. of the cost to be furnished to the contractors, and, on the completion of the contract, the balance due the contractors to be paid in cash, American gold, or its equivalent, and to remain as a first lien upon the entire road until paid. These are the four propositions I sent him.

Mr. STINE: Q. Is this paper from which you have just read, a copy of the one you sent to the Goverment? A. It is.

Q. Did you make it yoursel? A. I did. I ran it out (363) on the typewriter myself. The first proposition made was as scratched out on this paper, and I advised Mr. Cheery not to put those words in, and therefore the words were scratched out.

Mr. Stine offered the paper for examination.

Mr. McKinney: I scratched out the first proposition and then made a correct copy of it.

Q. Mr. McKinney, in the first proposition, which you say was finally accepted, I find this entry: "A committee of three to examine the books, accounts and vouchers of the Cauca Company in New York and ascertain the exact amount of expenses and obligations incurred by the Cauca Company in the enterprise." Will you please state whether or not there was any discussion between you and President Caro, or between you and any other representative of the Government, on the question of indemnification to this Company, whether it was to be—

Objected to by Mr. Robertson, who stated that the witness is now testifying to everything he remembers.

Mr. Stine: He has a perfect right to refresh his memory by questions.

After discussion, Mr. Stine agrees to withdraw the question.

Q. Please state what took place with regard to the first proposition and the language employed there, and what led up to using that language?

Same objection on the part of the Government on the ground of immateriality, incompetency and irrelevancy, which was overruled by the chair.

Mr. McKinney: If you will allow me, I will. I called upon the President after he had time to look over the propositions and had a consultation with him. I said to the President that I was, of course, interested in the Company, (364) but that I had no desire to do injustice to either party, and would like to settle the matter in justice to both the Government and the Cauca Company. I said, "If you will allow me to advise you, I will advise you what is best for the Colombian Government." He said that he would be happy to receive my advice. I, therefore, advised him to accept the second proposition of $600,000 in gold, or its equivalent, with 5% discount, because, I said, "If you go into their books and accounts, I am sure that it will cost at least $800,000." The President replied that he had no doubt that I was correct; but, if he were to settle by means of the payment of a gross sum, the probability would be that it would cost less than if he appointed a Commission to examine the books and decide to what extent they were entitled ta indemnification, but in the latter case the people could not find fault with him. Therofore, he preferred a

settlement in that way in order to satisfy the feeling of the Colombian people. I said, "Very well, Mr. President, I only offered the advice in the interest of the Colombian Government."

Mr. STINE: Q. McKinney, you stated, in answer to the question I have just put, that you told the President that if he settled under proposition No. 2, it would only cost $600,000; whereas, under proposition No. 1, it would cost $800,000; was it not more than $800,000? A. Well, over $800,000; I forgot how much exactly. The figures are in my Legation. I said, further, that by the time the question was settled it would probably cost a million.

Q. Please state whether or not anything was stated as to the repayment to the Company of expenses or of the repayment of expenses of construction.

Same objection on the part of the Government, which was overruled by the chair.

A. The statement of the President to me was this: (365) He said to me in reply to what I had said that he wanted the examination of all the books, vouchers and papers, and everything of the Cauca Company—everything that could be found about their business—to be before the Commission, and he said his desire was (if this is improper, please stop me) that the Company should receive back every dollar that they had expended; that was his statement to me—that it was his desire that they should receive back every dollar they had expended; he had no desire that the Company should lose one dollar.

Q. Did he not modify it by using the word legitimate? A. That word was always used. I said that myself.

Q. Anything said about paying back only amounts of money expended in the actual construction of the road on the work?

Same objection on the part of the Government.

Q. Mr. McKinney, will you please state what, if anything, ever was said in reference to the scope of the compensation—the scope of the indemnification. I mean the sum to be awarded; was it limited in any way?

Same objection on the part of the Government.

A. It was simply that the Commission was to examine the books, vouchers and all the papers in connection with the Cauca Company, and whatever amount was properly shown in those accounts should be awarded, and that award should bo final. This is all there was as regards limit of

amount The only proposition that contained any fixed amount was No. 2.

Q. When this final Convention was agreed upon, the draft was submitted to you, was it not? A. It was; the primary draft.

(366) Q. I mean the final draft? A. The final paper was not signed until after I left Colombia, and I cannot tell if the final agreement is from the same paper, because I have not seen it. The one I saw was the agreement drawn up by President Caro. He drew it up himself, and then after that Mr. Schramme asked me to insert certain things in it which he agreed to insert, and did insert. The paper was read over at my Legation in the presence of Mr. Sleeper and other Americans. We all talked it over together, and I said that the proposition was satisfactory to me. That is all I know about it. The final paper was not signed on account of sickness in Mr. Caro's family, and on account of his absence; it was not executed until I left the country.

Q. Were any propositions made in regard to a valuation of the property by experts? A. The Government made propositions of that kind.

Q. What was the effect of those propositions? Namely, what course did you pursue in reference to them? A. I positively declined to allow a valuation of the road by experts. I insisted that the contract called for 5 per cent. interest at the rate of $38,000 per kilometer, and that the Government must pay that amount at least, and we would not submit to a Commission of Engineers.

Q. Did the Government agree to withdraw this? A. I do not know that the Government withdrew them; they submitted them and we rejected them.

Mr. Stine: That is all I have to ask the witness.

Cross Examination taken up by Mr. Robertson for the Government.

Q. Did you ever go over any part of this road, Mr. McKinney? A. Never; no, sir.

Q. You said in your direct examination that you said to the President of the Republic that you were interested (367) in the Cauca Company; will you tell me how you were interested? A. I said as American Minister, but not financially. I was interested to the extent of defending my own people.

Q. You did not state the nature of your interest? A. I stated that while I wished to do the best I could for the Company, I wanted to be honest with the Government. Mr.

Caro was so much of a gentleman with me that I had no desire to take advantage of him in any way.

Q. Had you any doubt of the good faith of the President in offering to make an amicable settlement? A. Not at all.

Q. Had you any doubt as to the ability of the Government to carry out an amicable settlement when arrived at? A. Certainly not.

Q. How was it then that you advised the Government to accept your proposal as to the $600,000—to settle entirely for $600,000—instead of over $800,000. Was it your idea that the cost of this Commission would be over $200,000? A. No, sir. My idea was simply that I wanted to do what was best for both parties. I believed it was better for the Company, under the conditions, to settle and get their cash then and there, rather than go into litigation which might take some years to settle.

Q. At any rate you thought it perfectly just to the Company to accept the proposition calling for $600,000? A. I felt that it would be better for them to accept that than to fight the case for $800,000, for the special reason that I did not believe that Mr. Cherry would live long in Bogota, and I, therefore, told him to accept this $600,000 and get out. If he died, the Company would be left in a serious position with only the services of Mr. Schramme.

Mr. ROBERTSON: We will save time if you will confine yourself to responsive answers.

(368) Q. Do you remember when you submitted these four alternative propositions to the Government? A. I do not remember when I submitted them. These last propositions were submitted to the Government some time before the amicable arrangement was begun between Mr. Cherry and Mr. Schramme and the President. These are not the only propositions I submitted. My impression is that these latter ones did not go in until November. The first and second propositions were always submitted in practically the same form. You will find no difference in whatever may have been submitted by my Legation before that.

Q. Do you know when the paper which we have termed the Preliminary Contract, or Basis, was signed? A. I left Bogota on the 6th of December. Now, I do not know the date on which it was signed, but I believe it was about two weeks before I left.

Mr. STINE: Q. At all events, it was signed before you left Bogota? A. Yes, the Preliminary Agreement.

The Preliminary Basis was produced, and the date appeared as of the 27th of November, 1896.

Q. I now hand you the claimant's Exhibit No. 36, July 22, 1897, which instrument is dated November 27, 1896. Please examine that, and state whether or not it is the paper signed before you left Bogota? A. I am not Spanish scholar enough to decide that. The looks of the paper I do not remember especially. The paper was read to me at my Legation, and we discussed it there.

Q. Did you ever see an English translation of this paper? A. I think I did; I think Mr. Schramme made an English translation.

Q. Are you absolutely sure that you did? A. I cannot swear as I did, but think so, because I asked him to (369) give me a copy of the paper, but I would not want to swear that he did.

Q. You say that you think he did because it was his custom to give you papers that you called for, and you remember that you called for that paper? A. Yes; I called for this one.

Q. And that is the only reason why you suppose you have seen an English translation? A. I am confident that I did, but will not swear. I believe Mr. Sleeper made a translation. I asked Mr. Schramme to make a translation and show it to him. I cannot testify for certain, but I am confident that I saw it from one of them.

Mr. ROBERTSON: Q. Is it not quite possible that your memory recalls the original Spanish paper as outlined from your recollection of oral statements made between yourself and Mr. Schramme, or others, with respect to its contents? A. No, sir; my recollection refers to the paper more as regards the discussion of its meaning.

Q. Did you ask for information as to what it meant in English? A. I did; I took the word of Mr. Schramme and Mr. Sleeper and others, rather than my own.

Q. I now hand you the paper marked "Basis of Agreement," written in English. Please read that carefully, and state whether you remember it as the translation of the basis written in Spanish.

Mr. STINE: I object to this altogether; he is handing him a translation made by some one—nobody knows who—and he is asking for that as a translation of the contract made at the time. If it is for the purpose of testing the witness' memory, that is one thing; but if it is to test the witness' knowledge of Spanish, that is another thing.

The chairman thought the question might be changed to cover the point.

(370) Mr. ROBERTSON: What I am getting at is this: I want to know from this witness' memory what took place;

we can get the original together with your translation, and see how good a memory he has; I ask him whether that paper embraces the terms.

Mr. McKinney then proceeded to read the translation.

Mr. McKINNEY: The part second here I did not understand was in the contract as it reads here: "Both parties agree beforehand to consider as a just indemnity an equivalent to the cost of the construction of the said railway." That is a question we discussed very thoroughly.

Mr. ROBERTSON: Q. I am asking you whether this paper paper which you are now looking at embraces the substance of what we have called the basis of the settlement; that is, the Spanish paper signed about two weeks before you left Bogota, or, as you now say, eight days before. To be more particular, I refer to the Spanish paper dated the 27th day of November, 1896? A. I might say that it does contain the substance; there may be some change of words in the other, but it does contain the general substance.

Q. Now, does any particular part of this paper depart, as you understand it, from the substance of the last proposition, of which you have official knowledge, embracing the terms or the proposed terms of settlement between these parties? A. If you will allow me to read the second paragraph: "Both parties agree beforehand to consider as a just indemnity an amount equivalent to what the Company shall prove to have been expended on the work done by them in the construction of the said railrway." That was not my understanding.

Q. You understood that the Cauca Company claimed something more than that? A. More than the work done in building the road.

(371) Q. I see; you understood that the Company claimed something more than that? A. More than that.

Q. You were trying to get something more than that for the Cauca Company, were you not? A. Yes.

Q. You have stated in *your* direct examination that the substance of the final agreement was taken from the first four alternative propositions to which you have referred? A. Yes, sir.

Q. And how long before the basis of settlement, that is the agreement of November 27, 1896, was signed did you submit these four alternative propositions? A. I said before I cannot give the time; my opinion is in the month of November, 1896—from the 1st to the 15th.

Q. About what time elapsed from the submission of these four alternative propositions up to the time that the

Basis was signed? A. I should say a couple weeks; perhaps three.

Q. During that period of two or three weeks did you have any further discussions with the Government? A. Oh, yes, sir.

Q. How long prior to the final signing of the Basis of settlement was your last discussion with the Government? A. My last communication was with the Minister of Foreign Affairs. I have already testifid that on that day or the following day the President sent for Mr. Schramme, who came back with the Basis of Settlement.

Q. Do you know whether Mr. Schramme or Mr. Cherry had interviews meanwhile with the officers of the Government? A. With the Vice-President.

Q. Any other officer? A. Not that I am aware of.

Q. Were these interviews had by both Mr. Schramme (372) and Mr. Cherry with the President together, or did one have an interview and then the other? A. Only Mr. Schramme had an interview, because he spoke Spanish more than Mr Cherry did. Mr. Cherry did not speak Spanish much.

Q. Not sufficiently? A. No.

Q. How many interviews, as you recollect it, did Mr. Schramme have with the Government after your last interview and prior to the signing of the Basis of settlement? A. I cannot give you the exact number, of course. I should say as near as possible that Mr. Schramme called on the President two or three times before the signing of the Basis.

Q. And as I understand it, it was for the purpose of bringing about this attempted compromise, and for the purpose of discussing the propositions 1 to 4 alternatively? A. Discussing several propositions.

Q. And for the purpose of chosing from the four propositions some one which could be put into final form, and be the Basis of the compromise. A. No, sir; after Mr. Schramme's first interview, they arranged the Basis practically, but without writing.

Q. That is, Mr. Schramme told you so? A. Yes.

Q. That is the only information you have? A. That is so.

Q. So that possibly a week elapsed from the time he submitted the propositions to the time the Basis of Settlement was signed, and meanwhile Mr. Schramme had negotiations repeatedly during interviews with the President? A. He had one or two.

Q. You say a few? A. Yes.

Q. Do you know by any knowledge that you have whether or not either one of these four propositions was (373) actually accepted by the President at any interview with Mr. Schramme? A. Of my personal knowledge, I know nothing; I was not present.

Q. And do not know whether this proposition No. 1 was modified between Mr. Schramme and the President, or not? A. I only know from the terms that they gave me.

Q. Not from personal knowledge? A. From personal knowledge, no

Q. The next thing that you knew about the matter, of your own knowledge, after you had submitted the four propositions, was that the Spanish document, Basis of Settlement, dated Nov. 27, 1896, was shown to you? A. That is it.

Q. When it was shown to you, had it been signed by the representative parties? A. No, sir; a copy was shown me before it was signed.

Q. That was in Spanish? A. Spanish and translation.

Q. Did you see the Basis of Settlement, the Spanish document, after it had been actually signed? A. I cannot testify positively that I did, but I think I did.

Q. Have you sufficient recollection of what transpired at the time to enable you to tell whether or not you saw the original Basis of Settlement after it had been actually signed? A. The original Basis?

Q. Yes. Did you or did you not see it after it had been signed, and before you left Bogota? A. I saw the Basis.

Q. The original document called the Basis of Settlement? A. Yes.

Q. Where were you when you saw the signed paper, the Basis of Settlement? A. I was in my Legation.

(374) Q. About how many days before you left Bogota was that? A. That is pretty hard for me to tell; I should say about a week perhaps.

Q. You say that before the paper was really signed by the parties you saw a copy of it in Spanish, with a translation; how long a time elapsed between the time you saw that paper—the draft and the translation—to the time you saw the original paper in its signed condition? A. Well, as I stated before, it may have been 8 or 10 days, or two weeks. I do not know that I ever examined the original draft in Spanish at all; it had no interest to me. I examined the translation and then we talked it over.

Q. How long a time elapsed between the time when you first saw the translation and the time when you saw

the signed Basis of the Agreement? A. I believe I have answered that question.

Q. Please state again? A. Eight or ten days.

Q. Were there any further negotiations, as far as you personally know, with respect to this settlement, between the time that you saw the translation and the time that you saw the signed Basis of Settlement? A. Not that I know of. If I remember right Mr. Schramme called on the President, but what they did I do not know. I never had any personal knowledge of what the President said afterwards.

Q. So that, as far as your personal knowledge extends, you do not pretend to say what, if anything, took place with respect to the settlement during the 8 or 10 days elapsing between the time when you saw the translation of the proposed Basis of Settlement in its signed condition? A. Personally I know nothing about it. I was not present.

Q. Had you any interviews with respect to the contents of the final signed Basis of Settlement between the time (375) that you first saw it, after it had been signed, and the time when you left Bogota? A. With whom?

Q. Anybody. A. I saw the President once and congratulated him on the fact that we had fortunately brought the matter to a close.

Q. Is that the sum total of any conversation you had with the President on the subject, or with anybody else? A. Perhaps with the Minister of Foreign Affairs, but nothing officially.

Q. Had you anything more than a friendly conversation with him? A. No, sir. No business conversation with him after that.

Q. You considered that a Basis of Settlement had been outlined and formally fixed by means of this Spanish document of November 27th, 1896? A. I did.

Q. Did you ever hear of any changes introduced in the Basis of Settlement, as it was intended? A. No; I have not.

Q. Now, in the first of the four propositions embraced in the Company's Exhibit No. 51, I notice that you refer to some enterprise; to what enterprise do you refer? A. In the first proposition?

Q. Yes. A. If you will read it, I will probably be able to explain.

Q. I want your view of it. A. I assume it refers to the construction of the Cauca Railway.

Q. You are confident there is nothing else? A. Certainly.

Q. The enterprise that the Cauca Company had in hand was the construction of the Cauca Railway, was it not? A. That is what I understood.

Q. So far as you know, the enterprise referred to in (376) the first of these four propositions related to either what was wholly constructed on the part of the Cauca Railway Company, or to the construction and completion of the road or roadbed theretofore turned over to the Cauca Company? A. Yes, sir; that is what I thought it included.

Q. You mean that the enterprise consisted in the finishing of the partly completed road and the entire new construction of that which was to be constructed under concession? A. And the running of the road, also.

Q. You understood that the entire road, when completed, belonged to the Company? A. Quite so.

Q. Did the proposition of settlement referred to in the 3rd of these propositions refer to the same general enterprise referred to in the first proposition of settlement? A. That proposition refers to the same.

Q. Whereas in the first proposition you were to get at the cost and expenditures by referring to the Company's books and vouchers, in the third you were to take a per kilometer payment. A. That is what it says—yes.

Q. Did you consider that the last three propositions were calculated to produce the same result between the parties as would be arrived at by the first proposition? A. We believed that any of these propositions would result in a reasonable settlement of the claim. We believed that the first proposition was the best proposition that the Company could make.

Q. Best for the Company or for the Government? A. Best for the Company.

Q. Yet you say that either one of them would produce the same result? A. Yes.

Q. Were these propositions supposed to express all that was to be paid in order to arrive at a settlement? A. Yes.

Q. You speak in the first proposition of "the exact amount of expenditures and obligations incurred by the (377) Cauca Company in the enterprise." Were these expenditures and obligations referred to in either the third or fourth alternative propositsons? A. I think not, if I understand you right. Each proposition was distinct and separate by itself.

Q. Was nothing intended to be inserted in this first proposition with respect to the examination or inspection of

the road and works on the ground? A. No; not in the proposition as it was put in.

Q. And in the proposition, as it left your hands, it was not intended to have anything of that kind inserted? A. No; I knew nothing of the kind.

Q. Was it not intended? A. No; not on my part—no, sir. It was intended we were to settle simply by the books and accounts

Q. Does not this final basis of settlement contain a statement that the road must be inspected on the spot. A. I do not know what the final basis states; the preliminary basis does not state it.

Mr. Cisneros then read Article 4 of the basis of agreement as follows: "The Commission shall examine in the City of New York the books and accounts of the Company. It shall inspect on the spot the railway works for the purpose of making the checks and confrontations it may deem necessary," etc.

A. I did not so understand it.

Q. Do you not so understand it now? A. My answer is no. I would like to explain the question.

The chairman asked the witness to explain.

A. The question was discussed before the settlement. I understood it was a question for the Commission to decide whether they would or would not go down and examine the works.

(378) Mr. Robertson, on the part of the Government, asked that this latter part of the answer be stricken out as being entirely irresponsive.

A length discussion then ensued, and the answer being in reply to a question from the chairman, it was allowed to stand.

Mr. Cisneros then read the Spanish text of Article 4 of the Basis of Agreement.

Q. I call your attention now to the words "*inspeccionara sobre el terreno las obras del ferrocarril.*" contained in the fourth paragraph of the original Spanish document, being the Basis of Settlement signed on the 27th day of November, 1896, and ask you whether you know the English equivalent for those Spanish words?

Objected to by Mr. Stine as wholly improper, the witness having testified to having no special knowledge of Spanish, and has not attempted to testify to any particular translation.

The CHAIRMAN: The witness has disclaimed knowledge of Spanish, and it does not seem to the chair that his testimony on the point is proper or competent.

Mr. ROBERTSON: I assume that the chair does not understand the question.

After some discussion on the point the chairman allowed the question.

A. No.

Q. After this basis was signed, on November 27, 1896, did you hear those Spanish words which were quoted in my last question referred to between the parties? A. Before or after, I cannot say which.

Q. Do you remember whether these words were referred to after the signing? A. I do not.

Q. Did you ever hear anybody comment on the fact that these words had been put into the original signed doc-
(379) ument? A. I do not know that I did.

Q. I suppose the substance of what you mean to say is this: that you negotiated with the Government for the purpose of bringing about a compromise, and that when you arrived at the stage to which you have referred, you permitted Mr. Schramme to have an interview, and when the final agreement was signed in Spanish you found no fault with it nor had any criticism to make? A. Certainly, I could not criticise.

Q. If there was any change in the Basis of Settlement, as actually signed, from the proposition which you submitted to the Government, you are not responsible for it? A. I am not; I was not in the country.

Q. And any such changes would be chargeable to Mr. Schramme? A. They certainly would not be chargeable to me.

Mr. ROBERTSON: That is all.

Mr. STINE: Q. Mr. McKinney, I asked you the question as to whether or not each one of these four different propositions was supposed to be complete in itself, and you answered in the affirmative. You want to explain why the Company was willing to accept four different propositions, each varying in amount and in terms. Now, did you regard all four of them as propositions equally favorable to the Company? Did you regard all four of them as making a basis of compromise? A. I did.

Q. Did you regard all four in the same light—namely, that it was impossible for the Company to continue the work that it had undertaken to do, and because you thought you so wanted to manage to save out of the wreck whatever it was possible to save? A. I did.

Q. So that you did not consider that any of these propositions would be a full and fair compensation to the promoters of this enterprise for the giving up of what was considered to be a valuable franchise?

Objected to on the part of the Government; objection
(380) overruled by the chair.

A. The first proposition was for a settlement by the books, which, it was claimed, would produce to the Company $800,000; the second was a settlement for $600,000; I advised the Government to accept that, because it was better for the Government; I was asked by Mr. Robertson why I advised the Government to accept it; I would say in reply to that: because I was not acting as agent for the Cauca Company; I was acting as a diplomatic representative of the United States of America. I explain this in order that my position in the matter may be understood.

The CHAIRMAN: The Commission fully understands your position, Mr. McKinney.

Mr. ROBERTSON: I only wanted to get an opinion as to the difference in value of the two propositions.

Mr. MCKINNEY: What I intended to do was to settle the matter, because, as you can readily understand, as a diplomat, it would be greatly to my credit to settle a claim of $600,000 during the time I was Minister to Bogota

Mr. PENA: When you say that you had several conversations with Mr. Caro about this claim, were these conversations carried on in English or in Spanish? A. I always spoke to the President in English; he understood me fully, and I talked to him so by his desire, but, as these gentlemen may probably know, President Caro will not speak in English, and he always spoke through an interpreter, and I took his answers from the interpreter. Mr. Sleeper was the interpreter, and spoke English and Spanish fluently.

Mr. PENA: Q. Who was Mr. Sleeper? A. He was the Secretary of the Legation.

(381) Mr. PENA: Q. When you stated that President Caro stated that he wished all the money spent by the Company should be returned to the Company, was that statement made by the President or by the interpreter? A. By the President to the interpreter, and by the interpreter to me. I spoke in English, and he replied through the interpreter. Mr. Caro believed in Mr. Sleeper's ability to interpret, because at one time he said to me that he would like to have an interview with Mr. Cherry, who did not speak Spanish fluently, and the President asked Mr. Sleeper to act as in-

terpreter. This showed Mr. Caro's confidence in Mr. Sleeper.

Q. Do you remember exactly the words of the interpreter in this question of the reimbursement? A. He said he did not want Mr. Cherry, or his Company, to lose a dollar by the Colombian Government; he wanted them to receive back all the honest money they had expended—all the money they had honorably expended, and he hoped the matter would be settled amicably. He said he wished to do the same with all claims which were standing against the Government, and I firmly believe that it was Mr. Caro's aim, and I have perfect confidence in him.

Mr. CISNEROS: Q. I understand that while you were in Bogota, as Minister for this Republic, you had many differences with regard to claims, and you were always lucky enough to settle everything amicably, and were properly treated by the Government? A. My claims are not all settled now, but I may say that I have always had a most amicable arrangement with the Government, and have succeeded in settling most of the claims; I settled a good many also about which my Government knew nothing.

Mr. CISNEROS: Q. I understand, then, that you were perfectly satisfied that the Government meant to do what was right? A. Perfectly.

(382) Mr. CISNEROS: Q. Do you remember the day the conference took place at the Minister of Finance's between myself, Mr. Schramme and Mr. Cherry? I came afterwards to the Legation, and we had a talk about this affair, and you said that you thought the proposition of $600,000 was a good one, and you would try and do that for the benefit of both sides, and I told you I did not believe that, because the Company claimed a number of kilometers which I knew of my own personal knowledge that they had never built? A. Yes; I remember that you told me so.

Mr. ROBERTSON: Q. When you say that you understood that President Caro desired that the Cauca Company should lose no money, do you mean it to be understood that you thought he would countenance absolutely every expenditure made by the Company? A. Not at all, sir, because he said every dollar that they had honestly expended. If it has been spent improperly, I do not understand that as honestly spent.

Q. They claimed they had constructed so much railway and equipped it, and there was a dispute as to whether or not they did so? A. There was no dispute with the Government; the Government accepted it.

Q. There was no dispute as to the kilometers constructed? A. There was a dispute with the Cauca Com-

pany and the Minister of Hacienda, but that was accepted by the Commission appointed by the Colombian Government, and the Company got interest on it.

Q. Afterwards? A. No; they had already accepted the road.

Q. Tell me if they accepted all these disputed points? A. They certainly did.

Q. Do you know this of your own knowledge? A. There is no question about it.

(383) Q. How do you know they never denied it? A. They never denied it to me.

Q. Do you know whether the exact amount of the road turned over to the Government under this convention of Jan. 4, 1897, was any of it actually constructed by the Government, at any prior period? A. I know the Government accepted the sixteen and a half kilometers.

Q How do you know they accepted the sixteen and a-half kilometers? A. Because the records of the Government show it.

Q Have you seen them? A. I do not know that I have.

Q. Are you willing to swear that you have? A. I will not.

Q. Then, so far as you know, it may be entirely hearsay? A. There may be no road at all, as far as I know personally.

Q. Then, when you know from information, that the Government had accepted the sixteen and one-half kilometers, it may be only hearsay? A. No, sir; when I hear the Minister of Hacienda and other heads of departments talk about the road as being accepted, it cannot be called hearsay; we diplomats do not consider that talk hearsay.

Q Did the Minister of Hacienda ever state to you personally that the Government had accepted the sixteen and a half kilometers? A. Yes.

Q. Was there a dispute as to whether the Company had constructed the whole of the sixteen and one-half kilometers or not? A. The dispute was that from a certain point to another point, about six kilometers, that Mr. Cisneros had built that, and that the Company claimed that the road was not in running order, and was grown over with woods and trees, and that there was no signs of a road when Mr. Cherry got it.

Q. That is what the Cauca Company claims? A. Exactly.

(384) Q. Did the Minister ever admit to you, or in your presence, that this disputed number of kilometers had real-

ly been built by the Cauca Company, and not by Mr. Cisneros? A. No.

Q. So that part of the dispute remained unsettled to the end? A. Yes.

Q. And do you know whether it was settled before the final Basis of Settlement was executed? A. It was not settled in the final Basis of Settlement.

Q. You were asked by Mr. Stine about the intent of making certain compromises and you say there was such an intent? A. Yes.

Q. Now, when the final compromise between Mr. Cherry and the Government was arrived at, was it, as you understood it, to be in its final shape carried into the final convention? A. Yes.

Q. Then, so far as you know, the Basis of the Settlement was to be carried forward into the final convention, and it was by that convention that the final claims of the parties were to be framed for submission and adjudication? A. Yes.

Q. It was intended that this agreement, under which we have been acting in these proceedings, should contain all the facts embraced in the final terms, was it not?

Objected to by Mr. Stine, which was overruled by the chair.

A. Certainly.

By Mr STINE: Q. Was it intended, whether or not, that the question of the sixteen and a-half kilometers, (385) which had been accepted by the Government, should be gone into before this Commission? A. No.

Q. Was it not the intention of this Commission to confine itself simply and only to the single question of ascertaining the amount which had been expended by the Cauca Company? A Yes.

Mr. ROBERTSON: Q. You mean that that was what you supposed when you submitted your four propositions? A. Yes.

Mr. ROBERTSON: Q. You had no interviews in the meantime? A. When I submitted the propositions, I supposed that, and I considered the Basis of Settlement was on that basis. I had no interviews after the settlement was arranged between Mr. Schramme and the President.

Q. So far as you have any personal knowledge, did the President ever consider that the kilometers claimed by the Government to have been constructed by Mr. Cisneros were, in fact, constructed by the Cauca Company? A. The question never arose between us.

Q. Did it ever come up between you and the President and the Minister as to whether or not that question should be kept in or kept out of the final agreement? A. That was discussed with the Minister of Hacienda?

Q. After you had submitted your four propositions, and after Mr. Schramme had taken up the negotiations, did the question then come up? A. Never, sir.

Mr. ROBERTSON: That is all.

(386) The CHAIR: Q. You have heard from the questions that have been asked you that there was a difference of opinion as to the scope and construction of the contract, and the purpose in bringing you here was to learn from you the facts leading up to the Convention, but as we understand that you were not actually present at the time that the Basis was drawn up, do you know of any person who was present? A. I do not; I believe Mr. Schramme was present alone; perhaps Mr. Mallarino. Mr. Caro wished the matter settled alone, and if there was a Minister present, it would savor of diplomacy. I told Mr. Cherry that if the President was willing to arrange matters, they had better do so, and I would drop out. I had no official connection afterwards with the question. If there was a change made in the presence of the Minister of Hacienda, it was after the agreement was made. It was understood in Bogota that the Minister of Hacienda refused to sign this contract which the President had made, and that the President told him he must sign it or resign.

The CHAIRMAN: Q. Did he state his grounds for refusing? A. He said it was not an honest statement, and the President was offended, taking it as an insinuation that he was defrauding the nation.

Mr. STINE: Q Was that refusal as to signing the Basis, or as to signing the Convention? A. The final Convention.

By Mr. ROBERTSON: Q. Was the Minister's objection that the final Convention went too far in favor of the Cauca Company? A. I suppose it was; he charged that the President was making a contract detrimental to the interests of the Government.

(387) Mr. ROBERTSON: Q. Did he claim that the Cauca Company forfeited its rights? A. Yes.

Q. He claimed that the Cauca Company here was entitled to nothing? A. They always did.

Q. Claimed they were not entitled to the $200,000? A. I do not know that.

Q. Do you know whether the general report was that

he objected to the payment of the $200,000? A. He objected to the whole of it.

Mr. STINE: Q. Did he object to the three experts going down to examine the road? A. No; he wanted the valuation of the work.

Mr. ROBERTSON: Q. You are sure he did not object to that? A. Certainly not; he made the proposition to me himself.

Q. So that, after the Government paid the Company $200,000, he got mad and left? A. Precisely.

Q. Was there nothing said about leaving the balance to the Commission, or was it left to the Commission to find out whether there was any balance at all? A. I suppose so.

The CHAIRMAN: The Commission extends its thanks to Mr. McKinney for the time he has been good enough to give in coming here to render his testimony.

Mr. McKinney then replied, saying he wished to state that he came here for the purpose of telling what was right; and, at the same time, he spoke in very complimentary terms of the honorable manner in which President Caro had met all claims put forward by him as representative of (388) the United States, and he believed that President Caro always intended to do what was right. He did not wish to leave the meeting without expressing himself as deeply indebted to the Government of Colombia for the good treatment he had always received at their hands.

The Chairman then introduced the report of Mr. Barney in reply to certain questions asked him at the previous meeting. Mr. Stine read the report.

It being 4.45 p. m., the meeting adjourned until the next day, Tuesday, at 2 o'clock p. m.

(Signed.) LEWIS M. HAUPT,
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER,
Secretary.

Thirteenth Session.

(389) Held at 30 Broad st., on Tuesday, July 27th, 1897, at 2 P. M.

Mr. M. P. Carter called and sworn on behalf of the Government.

Present: Commissioners, Attorneys and Counsel as before.

The minutes of the previous meeting were not as yet ready for signature.

Mr. STINE: I beg to introduce the original power of attorney from Mr. Cherry to Mr. Calman, as stated at the previous meeting.

It was marked for identification as "Exhibit No. 52."

Exception on the part of the Government.

Mr. STINE: Certified copy of Mr. Cherry's power of attorney from the Cauca Co. will be introduced as soon as ready. It is in the hands of the notary.

CHAIRMAN: I believe the program for to-day is to receive evidence on the part of the Government, if it be ready to open its defense.

Mr. ROBERTSON: We have determined upon going directly into the question of proofs rather than present any opening address or written statement, so that I believe that we shall save time. I shall, therefore, call now upon Mr. Carter.

Mr. CARTER was then called, and the usual oath was administered to him by the chairman.

EXAMINATION TAKEN UP BY MR. ROBERTSON.

Q. Please state your full name and residence. A. M. P. Carter, Winchester, Va.

(390) Q. Are you an American Citizen? A. I am.

Q. What is your age? A. 46 years.

Q. What is your profession? A. Civil engineer.

Q. How long and where have you practiced that profession? A. Both in North and South America for some 20 or 25 years.

Q. Have you ever had any experience in the construction and laying out of railways? A. I have.

Q. Whereabouts? A. In the United States, in Central and South America.

Q. How much such experience have you had in South America? A. At the Isthmus of Panama and Guatemala

about 18 months; in Chili about 18 months, and in Colombia four and a half years.

Q. Are you acquainted with the Spanish language? A. I am acquainted to a certain extent.

Q. Do you read it and speak it? A. Yes; I read it and speak it.

Q. Do you have any trouble in understanding it, in making yourself understood when you speak in the Spanish language? A. I speak English with more facility, but can make myself understood and understand almost everything said in Spanish.

Q. How long have you had your acquaintance with the Spanish language? A. About 15 years. I would mention here that I have not had that acquaintance 15 years, but began to study Spanish 15 years ago.

Q. And how long have you been sufficiently well acquainted with the Spanish language to enable you to explain yourself clearly and understand others? A. I could not say exactly; probably from 6 to 8 years, perhaps 10 years.

(391) Q. You say that you have been about 4 years in South America in civil engineering. Do you mean in the Republic of Colombia? A. I said in Colombia about four years and a half.

Q. What were you connected with professionally when you went to Colombia? A. Do you mean while in Colombia?

Q. Yes. A. With the Cauca Railroad.

Q. You mean the Company whose road ran from Buenaventura to San Jose? A. I do.

Q. When did you first become connected with that road, and in what capacity? A. About the 1st of January, 1891, in the capacity of civil engineer.

Q. What were your duties in that position? A. My first duties were concerned with the survey of the extension of that road to a point called Caballete, also to Sucre and San Jose.

Q. How long did you continue to discharge these duties? A. Uninterruptedly, do you mean.

Q. Yes. A. Probably about four months.

Q. When did you begin them? A. About the 15th January, 1891. My duties to the Cauca Railway began about 1st of January. I now refer particularly to the surveys.

Q. Well, between January 1st and January 15th, what did you do? A. I was engaged upon the preliminary work before starting out on surveys, looking over maps and profiles, etc., prior to entering on the work of surveying.

Q. When did you cease your connection with the road? A. About the 1st of March, 1895.

Q. Were you in its service continuously from the 1st January, 1891, to March, 1895? A. I was not.

Q. During what periods were you absent? A. From (392) about 15th of May, 1891, to 15th of June, 1891, and probably from 1st of March, 1892, to the 10th of May, 1892.

Q. Where were you during these periods? A. During the first period I was in Cali, and during the second period in the United States.

Q. And, with these exceptions, you were continuously in the service of the Company from January, 1891, to March, 1895? A. I was.

Q. In what part of 1895 did you leave the service of the Company? A. I left the service of the Company 1st of February, 1895.

Q. Where were you when you severed your connection with the Company? A. At Buenaventura.

Q. Do you remember the actual length of the Cauca Railway as it was actually finished and completed at the time you left it.

Question objected to by Mr. Stine as leading, immaterial and irrelevant.

Mr. ROBERTSON: I did not suggest the answer, nor do I suggest the length of the road. I consider the question as far distant from leading as any question could possibly be.

Mr. STINE: You are leading as far as possible to lead.

CHAIRMAN: In this particular case the chair will overrule the objection on the ground that it is not sufficiently leading.

(Question repeated.)

A. I do.

Q. State that length, please?

Same objection on the part of the Cauca Co., Mr. Stine stating that the question was further objectionable because (393) it had not been shown that the witness had any knowledge as to the length of the road.

CHAIRMAN: So far as the objection to the form of the question is concerned, the attorney for the Government will no doubt change it.

Mr. ROBERTSON: I do not propose to change it unless I am compelled to do so.

Some discussion then ensued on the form of the question to be put, and the objection to the same was again overruled by the chair.

Exception to the ruling on the part of the Company.

Question was then repeated, namely:

Q. Do you remember the length of the Company's railway as it was actually finished and completed at the time you left it? A. I do recollect and know the length of the Company's railway when I left the Company.

Q. Please state that length? A. K. 36,740.

Q. Did you ever go over any part of that road personally? A. Frequently.

Q. When did you first go over any part of it? A. About the first of the year 1891.

Q. Did any one go over the road with you on that occasion? A. They did.

Q. Please state who went with you? A. The Manager of the Company, who was Mr. Cherry, his Superintendent of Construction, Mr. Boyer, and his Superintendent of Purchases, Mr. Davis.

Q. Do you remember about the particular time in 1891 when you and Mr. Cherry, Mr. Boyer and Mr. Davis went over the road? A. Not later than the 3rd of January; it may have been the 1st, 2d or 3rd of January. That is my recollection.

Q. From what point did you start on that trip? A. From Buenaventura on this special trip that you speak of. (394) Let me see; I did not quite understand your question. On the trip which you are now referring to I started from Cordova.

Q Had you previously been over any part of the road lying to the West of Cordova? A. I had.

Q. With whom? A. I passed over it with the Chief Engineer of the Company.

Q. How long before January 3rd was that? A. That was about the last day of December, 1890, if I recollect rightly.

Q. How did you make the trip from Buenavtura to Cordova at the close of December, 1890? A. On the train.

Q. On the regular passenger and freight train? A. Yes.

Q. So, the freight and passenger service was running regularly at the time? A. Regularly. I may remark that the same train carried freight and passengers.

Q. Coming down to that trip which you made with

Messrs. Cherry, Boyer and Davis, in what conveyance did you and these gentlemen make the trip on that occasion? A. On a hand-car. We went as far as San Cipriano, about six kilometers east of Cordova.

Q. What do you mean by a hand-car? A. Well, it is sometimes called a push-car, mainly used in repairing the track by the sectionmen. Four men push the car and there is usually a seat.

Q. Who propelled it? A. Four native employees in the service of the Company.

Q. And you and the three gentlemen named were the passengers? A. Yes.

Q. Well, how long a distance did you travel over the road east of Cordova in that way? A. About six kilometers.

(395) Q. Did you have any trouble in getting over that distance? A. I cannot at present recall any trouble at all.

Q. At the end of about six kilometers you came to the Dagua river? A. Yes.

Q. What did you do then? A. We crossed the river in a canoe.

Q. From that point where did you go? A. We passed over the line, walking over the track as far as a point called Caballete.

Q. How far is that from Cordova? A. About ten kilomenters is the total distance from Caballete to Cordova.

Q. For what distance from the Dagua river where you left the car were the ties and rails already laid? A. About one kilometer further.

Q. To what kilometer would that bring you from Buenaventura? A. K. 27.100 would be accurate.

Q. On this occasion to which you refer, did you go beyond K. 27.100? A. I did.

Q. How much beyond that? A. About three kilometers east.

Q. What was the condition of the road from kilometer 27.100 to this last point you have named? A. The road was not completed beyond K. 27.100 up to the point Cabalette, which I named.

Q. How was it to the point west of point K. 27.100? A. Completed, with the exception of San Cipriano bridge.

Q. You say that these three kilometers lying west of K. 27.100 were not completed; how was it in physical condition? A. The clearing had been made several years previously—about 5 or 6 years previously—possibly more than that, and at the time when I passed over it, there was a growth of underbrush on the right of way; and the grading

was partially done—earthworks, embankments and excavations finished.

(396) Q. As an engineer, are you able to state to what proportional extent this three kilometers was in a completed condition?

The question was objected to by Mr. Stine, on the ground that the witness was not able to tell from a fifteen days' stay how much work had been done on the line, nor how much remained to put it into completed condition. After some discussion, the chairman said that although he did not doubt the competency of the witness to be able to state after an examination how far the road was completed, he did not think that at the time the attorney for the Government referred to he was in a position to do so.

Mr. ROBERTSON: We are asking whether he now knows the condition of the road, speaking with the information he has acquired during all the years of his experience connected with the Company. To-day he has a perfect knowledge of the condition of the road.

CHAIRMAN: It does not appear from the record that he had actual knowledge at that time.

Discussion then ensued as to the propriety of the question to be put by Mr. Robertson. Some further discussion having ensued, the question being still objected to by Mr. Stine, the chairman said that he thought the question might be so modified as to show that the opinion desired from the witness was as to present time, as it seemed to him that the question was open to misunderstanding, inasmuch as it employed both the present and the past tenses; and, therefore, seeing that it was material to know the physical condition of the road, he did not wish to put difficulties in the way of answering the question. The chairman then ruled that the question be answered. Exception to the ruling on the part of the Company. Question was then repeated as follows:

(397) Q. As an engineer are you able to state to what proportional extent the three kilometers referred to were in a completed condition? A. I would say that about seven-eighths of the grading had been performed prior to the first of January, 1891; I suppose to three kilometers beyond K 27.100.

CHAIRMAN: Does that include masonry or bridges?

Mr. ROBERTSON: I am just asking that question now.

(To Witness:) When you say that seven-eighths of the grading, in your judgment, was completed, state just what you mean to include in the term grading. A. By grading

I mean excavation and embankment, and I do not include bridges in that estimate, or culverts. Cuts I do include.

CHAIRMAN: You mean no superstructure? A. No.

Mr. ROBERTSON: Q. Now, do you know whether any bridges or culverts were necessary in those three kilometers? A. They were necessary.

Q. To what extent? A. To the extent of repairing the road in order that the trains might pass over it.

Q. I meant more particularly to ask you to distinguish between bridges and culverts on these three kilometers; that is to say, how many bridges and how many culverts were necessary? A. There were some wooden box culverts. They were covered up by an embankment, but there was no wooden bridge on these three kilometers.

Q. Was it intended that there should be any bridges on these three kilometers? A. It was so intended.

(398) Q. How many bridges within that space? A. Some six or eight.

Q. Over streams? A. Yes, rivers.

Q. What character of bridges? A. Wooden bridges and frame bents.

Q. As an engineer are you able to state the proportional cost of work done on these three kilometers as compared with the same kilometers after the road, bridges, culverts, and track had been fully completed and laid?

Question objected to by Mr. Stine on the ground that cost is not within the knowledge of the witness. He objected to the question as calling for a conclusion which was certainly improper. He decidedly objected to the attorney asking the witness' opinion as to the cost of work done, as it was not within the witness' knowledge to say anything as to the cost. As regards the proportion of work done, that may be peculiarly within his knowledge as an engineer in having all the information the witness might have obtained since then.

CHAIRMAN: It would seem to the Chair more logical to inquire whether the witness had made any estimate on the question.

Mr. ROBERTSON: I would like the point disposed of now, so as to save time. I want to call particular attention to the point of the contention. It is that I cannot ask this witness what his knowledge is on certain subjects because I have not yet shown that he has such knowledge. I cannot ascertain whether he has that knowledge unless I ask him; but here at the initial point I am met with an objection that I cannot ask him this question because I have

not asked the same thing before. That mode of objection would deter me from going on entirely.

CHAIRMAN: The Chair will take the responsibility of stating that the witness has qualified himself as an engi-
(399) neer, and should have sufficient knowledge as to cost of labor and the cost of material during the four years of his connection with that road to enable him to answer the question.

Mr. SCHRAMME: I would state that he was on the survey and not on the construction; that is what I understood from his testimony.

Mr. ROBERTSON: I see that one of the members of the board seems to be in doubt as to the witness' competency.

Mr. SCHRAMME: He was sent out for surveying purposes, and he has never mentioned that he was on construction.

CHAIRMAN: I think you are mistaken, Mr. Schramme.

Mr. SCHRAMME: The record will show what he has said.

Mr. ROBERTSON: To save time in looking at the record, and in order to be absolutely certain on the point, I will ask him the question.

EXAMINATION CONTINUED.

Q. Did you ever have anything to do with construction work while you were in the employ of the Cauca Co.? A. I have.

Q. What did you have to do in that connection? A. My duties were those of a construction engineer—general superintendent of the work of construction.

Q. Are you familiar with the price of railway supplies and materials used in the construction of such a road as the Cauca Railroad, in such a country as that road runs through? A. I consider that I am.

Q. Are familiar with the wage scale that prevailed in that part of the country from 1890 to 1895? A. I am.

(400) Q. With all classes of men working upon railway construction? A. With all classes working upon that particular railway, yes.

Mr. ROBERTSON: Now, I assume that we have made the question proper and in order.

The question was then repeated and allowed by the chairman, as follows:

Q. As an engineer, are you able to state the proportion of cost of work done on these three kilometers as compared with the cost of the same after the road bridges, culverts

and track had been fully completed and laid? A. Yes, approximately.

Q. State the proportion of cost of those kilometers when you saw that portion of the road in January, 1890, as compared with the cost of same kilometers when the road was fully completed? A. The cost of the work done will be something more than half of the total cost of the three kilometers when completed.

Q. Have you any knowledge as to where the new construction on the Cauca Co. railway commenced after the acquisition by Mr. Cherry of the Cauca Co. railway concession? A. I do.

Q. Exactly. The three kilometers of partly completed road which you have just referred to. At what kilometer point west of Buenaventura did the new construction begin? A. Just before asking that question I should like—

Mr. STINE: Please answer the question.

A. New construction work began about K. 29.700 or K. 29.800.

Q. Can you refresh your recollection so as to be able to state the exact distance from Buenaventura? A. I can.

Q. Please do so.

(401) Mr. Stine objected to Mr. Cisneros whispering the exact distance to Mr. Robertson, and then having the witness asked what the exact distance was. He objected to that method of cross examination.

CHAIRMAN: It is not material in any way.

Mr. ROBERTSON: I will call attention to the fact that during the cross examination of his witnesses Mr. Stine has done the same thing repeatedly, and I never dreamt of charging him with anything illiberal. The point is marked in four or five different places; it is also marked on the map, and it is utterly absurd to suggest that Mr. Cisneros had any intention of informing by whispering.

CHAIRMAN: The witness can look at the maps and refresh his memory.

The map was then produced.

A. The map is not marked in a way to indicate the exact point to any stranger not acquainted with the matter.

Q. Can you, by examining the map, locate the exact point? A. I can.

Q. Please do so then? A. The point is K. 29.650 (after a further examination.) The exact point is 27.100, plus 2.650, making it 29.750. I correct my previous statement of 29.650.

Q. When was this new construction, to which you have

referred, commenced? A. This new construction was commenced in the month of January.

Mr. STINE: Q. What year? A. 1891.

Mr. CARTER: Will you allow me to modify my previous answer?

Mr. ROBERTSON: Certainly.

Mr. CARTER: Some construction work had been done (402) beyond a point 29.750, to which we have just referred, in the month of December, 1890, by the Cauca Co.

Mr. STINE: Q. Were you there then? A. I was not.

Q. How do you know? A. Hearsay.

Mr. ROBERTSON: Q. I suppose that was not to any special extent, was it?

Mr. STINE: How can you say whether it was or not? He says he knows nothing about it

CHAIRMAN: The point is not material.

EXAMINATION CONTINUED.

Q. When you and Mr. Cherry, Mr. Boyer and Mr. Davis took this trip over part of the road in January, 1891, did you find any laboring men working on the road? A. I did.

Q. At what point? A. At the point called Caballete, about 30 kilometers from Buenaventura.

Q. What where they doing j A. They were engaged in excavating, grading, embanking, etc.

Q. How many were there so engaged? A. About a dozen.

Question objected by by Mr. Stine, who said he wished to keep within the rules of direct examination.

Mr. ROBERTSON: I submit that the witness has testified that he found men at work, and I now ask him how many there were there. This question is absolutely within (403) the rules of direct examination.

Chairman allowed the question.

Q. Do you remember about how many men you found there? A. I do.

Q. Please state the number? A. About a dozen.

Q. They were engaged upon the excavation of the line, were they? A. On the new work.

Q. And it was at that point the new work was commenced? A. At that point or about that point. This is beyond point 29.750, about 300 meters beyond where the new work began.

Q. Have you any information as to when these men

were set to work at that point? A. I have been informed.

Q. By whom? A. I cannot now recall.

Q. State whether you acquired that information in the course of your employment as construction engineer for the Company?

Objected to by Mr. Stine, who said that whatever the witness has had would naturally be during the time he was engaged as engineer of the Company.

Mr. ROBERTSON: I suppose whatever he knows and has acquired during his employment by the Company as engineer, I am entitled to ask him about?

CHAIRMAN: The objection to the question is that it appears to be vague. Without laying stress upon purely legal technicalities, the chair desires to get all information that will throw light upon the subject before us, and submits that though it does not appear to be material when these men began work, or the number of men employed, as (404) well as the actual salaries paid, as, even if we got all this information accurately, it would only mean a percentage of the cost. So the chair respectfully submits that it does not matter how long the men were employed.

Mr. ROBERTSON: If the chair please, we have a difficult task here; we have no books, and we have to proceed systematically and logically and to be particular to leave nothing to guess work that we can possibly demonstrate by proofs. At the start we endeavored to show the number of men employed, then the schedule of wages. We will then show that the number of men was increased; that it was then diminished, and then again increased, and then we will get at the average number of men. The Commission could understand and gauge how much the average man could do in one day. We know and are prepared to show what they can do in that country, and in this respect we expect to show what the road has cost in its present condition, and, going on, to show how the work should have been done, and the character of the route over which the line goes, and leave it to the judgment of the Commission to show what under these circumstances the cost should have been.

CHAIRMAN: Speaking liberally, and in the absence of any opening argument, it is the duty of the chair to admit anything that will throw light on the cost of construction, and, as a liberal ruling, the chair will authorize the witness to answer the question as far as he is able to do so.

Exception taken to the ruling on the part of the Company. Question repeated, namely:

Q. State whether you acquired your information in the

course of your employment as construction engineer of the Company? A. I did.

(405) Q. Have you any information as to when these men were set to work at the point we have referred to? A. My opinion is that, in compliance with the terms of the concession, they began to work—

Interrupted by Mr. Stine, who said the witness must answer the question without explanation.

A. I was informed by Mr. Cherry or Mr. Boyer.

Q. When were you informed that the men were put to work? A. As to that, exactly, I cannot recall the date. I was informed, but I have forgotten.

Q. Can you state whether it was in any particular part of any year? A. I can.

Q. Please state that. A. It was in the close of 1890.

Mr. Stine: Q. Who told you so? A. Mr. Cherry or Mr. Boyer.

Mr. Robertson: Q. From this 3rd day of January, 1891, or about that day, when you found these men, about 12 in number, working at the excavation, how long was it before the number of men engaged in construction work was increased? A. The number of men was increased daily after I got there.

Q. Had you anything to do with the increasing of the number? A. I had not.

Q. Who secured the new men put upon construction? A. The manager of the Company and his agents.

Q. Who was he? A. Mr. Cherry.

Q. You say the number of the men on construction was increased from day to day. Will you state to the Commission, as nearly as you can, the rate of increase (406) from day to day, from week to week and from month to month? A. That I could not do. The rate of increase I could not state. One day 12 men came, the next 50.

Q. Do you know whether construction work proceeded continuously, or almost continuously, after the 1st January for any considerable length of time? A. It did.

Q. For about how long? A. Construction work continued as long as I was there, but on a very small scale at some periods.

Q. Well, from the 1st of January, 1891, it was for a time at least on an increased scale? A. It was.

Q. For how long a time did it increase after January 1st, 1891? A. Up till about July 1st, 1891.

Q. Up to the 1st of March, 1891, can you state what

the average number of men was employed there on construction; I mean from 1st of January, 1891? A. I might state the average number between limits. My impression is that the numper of men employed on construction work, without including those engaged on repairs, would not exceed between 150 or 200—would certainly not pass 200.

Q. I am asking you to state, as nearly as you can, the average number of men employed on construction for those two months. A. That would be attempting more than I can do.

CHAIRMAN: Q. You mean that this number, 150 to 200, is the limit of the average number of men? A. No; I do not mean that. I stated the maximum.

Q. Do you mean that the maximum number for these two months did not exceed 200 men? A. My impression is that the maximum number of men employed would not exceed 200 men from January 1st to March 1st, 1891, strictly on construction work.

Q. Now, take the month of January. Can you state (407) what the maximum number of men on construction was for that month, about? A. I could not. If you will let me I will state why I cannot.

Q. Proceed. A. Because I was engaged on the surveys of the road.

CHAIRMAN: Q Were these persons, referred to by you, employed solely as laborers on grading, or did you include engineers and other higher employees? A. I meant by 200 men, those employed on grading and cleaning—laborers only. I did not include engineers or higher employees.

Q. May I ask the average wages? A. Some laborers got $1.40 a day, inferior laborers received less.

Mr. ROBERTSON: Q. In what money was this? A. Colombian currency.

Q. Can you give the Commission any information as to the percentage of the higher class of laborers who got about $1.40 a day, as compared with the inferior laborers? A. Roughly, I would say that probably 75% were receiving $1.40 a day. Later, the proportion of men receiving these wages of $1.40 was considerably lower because labor was more abundant, and for other reasons.

Mr. ROBERTSON: Q. Take the month of March, 1891, can you state the maximum number of men employed on construction work for that month? A. My impression is that I can, approximately.

Q. Please state it? A. I think it would be about the same as in February.

Q. And, so far as you know, did that number increase or decrease for the month of March, 1891? A. I am un-
(408) able to say. That is, I am unable to say if there is an increase or decrease until some time in June.

Q. Quite so. Question calls for that? A. I see I misunderstood the question. Yes; the number of men was increased after the month of March.

Q. That is, increased beyond the maximum 200 before it was decreased? A. Yes; that is what I say.

Q. Can you tell to what extent, about this increase took place? A. I can.

Q. Please do so? A. The number of men increased until, quite probably, it reached 300 men in the month of June; that is, men on construction.

Q. Were those men employed at the wage scale that you have just stated in answer to the chairman's question? A. Up to that time, wages had not been reduced.

Q. Were the men proportioned about 75% of the higher-griced laborers, up to that time? A. Probably they were. I could not auswer that question.

Mr. STINE: Q. Now, which is it? Probably they were, is one thing, and I could not answer that question, is another? A. I could not say more than approximately.

Q. After July 1st, 1891, was there an increase or decrease of the men on construction? A. There was. There was a decrease, and afterwards an increase.

Q. State what the decrease was, and how long it continued, and what the increase was, and how long that continued? A. About the end of the month of October there was a decided decrease in the number of men employed.
(409) Q. With respect to the period between June 30th, 1891, and October, 1891, was there an increase or decrease in the men employed on construction? A. That answer I could not give categorically.

Q. What is your best information on that point? A. My best information is that by the middle of July there must have been a slight increase. After that, I feel quite positive that there was not any increase beyond the number there about the 1st of July, not exceeding 200.

Q. Can you state about how many of the 300 men on construction continued after July up to this period of October, when you say that there was a decided decrease? A. The number of men employed upon construction for the months of July, August, September, was practically the same; that is, about 300 men.

Q. To what extent was this decrease which then ensued? A. For the months of November and December, I would say that the number of men on construction would

be less than 200. When I said that there was a decrease, I meant it was at the end of October.

Q. What would be the maximum number of men on construction during the months of January, February, 1892? A. Probably about 150 men.

Q. Why do you say probably? A. Because I have no positive recollection.

Q. Have you any recollection as to whether or not there was a decrease between December, 1891, and March, 1892? A. I have no positive recollection. I have an opinion.

Q. What is your opinion based on? A. Upon what I saw of the work of construction when I frequently passed over it.

CHAIRMAN: Mr. Carter, please confine yourself to your knowledge of the facts.

(410) Q. With respect to the construction work done between December, 1891, and March, 1892, was it greater or less than was done during the months of November and December, 1891? A. I can answer that question if it is permitted me to make an explanation as to—

Objected to by Mr. Stine, who said the Commission did not require the witness' explanation.

Mr. ROBERTSON: Mr. McKinney was allowed yesterday to make a series of explanations which were totally uncalled for.

Mr. STINE: Well, it was for you to object to them.

Mr. ROBERTSON: The chairman admitted them.

Mr. STINE: Because you did not object to them.

CHAIRMAN: The chair has already ruled that the witness can testify on any point on which he has knowledge. The chair would rule, therefore, that he may answer the question without giving merely an opinion, but stating the facts,

(Question repeated.)

A. There was more construction done in the months of January and February, 1892, than in the months of November and December, 1891.

Q. Now, in which month as between January and February, 1892, was most construction work done? A. There was more construction work done in February than in January.

Q. Can you account for that being the case in view of your statement that the number of men was decreased after October, 1891? A. I can.

Q. Please do so. A. About the end of October we had

trouble over the Dagua river. The San Cipriano bridge was (411) carried away by the floods, which broke communications east of San Cipriano, and the force of construction was reduced, very much reduced, on the new work between K. 30 and Sucre, and that is one reason. At that time all the efforts of the Company seemed to be devoted to the reconstruction of that bridge, because it was only after the completion of that bridge that we could convey construction material over the road. This interfered very much with the work of construction.

Q. The work of constructing the bridge was new construction work? A. It was; it was a part of construction work, but force on excavation, etc., was at the time largely reduced.

Q. The men employed on the repair of the bridge, were they or were they not on the force of construction? A. They were part of the construction force.

Q. So that they were taken from the grading work and put on the bridge construction? A. No; that is not the case.

Q. How were they taken? A. The force on grading was reduced; the men employed on grading were discharged and went to their homes, and the force of bridge carpenters was added to as the requirements of the bridge increased.

Q. Were they natives? A. They were, but they were not used to grading. The were used to bridge work. The men were not transferred from the one work to the other, although some of them got the same wages.

Q. Were some paid higher wages? A. They were.

Q. How much? A. Carpenters, foremen, sometimes got paid $3.50; inferior carpenters not more than $1.60.

Q. How many foremen? A. The foreman in charge of the bridge was Mr. Davis, and there were probably two men, natives, under him who earned about $3.50 each, and (412) three subordinate carpenters getting $2 or $2.50 per day, and two or three others earning $2.25 or $1.50.

CHAIRMAN: Q. Can you give us the total number of men employed on the bridge construction? A. Connected with the bridge in one way or another, I should say about 50 men; not exceeding 50; may be not more than 30, and that not continuously, because at times their services were not required.

CHAIRMAN: Q. Was it a pile bridge? A. Yes.

Q. What was its total length? A. Over the water, 210 feet.

CHAIRMAN: Q. From abutment to abutment? A. Yes. The approach on the east side would be about 250

feet more. It was at that time a trestle bridge. The bridge was replaced by a iron span.

Q. How far above the water? A. 20 or 22 feet.

Q. Can you give us as an engineer an idea of the total cost of that bridge? A. I can.

CHAIRMAN: Please do so? A. I should say the bridge cost about $5,000. Colombian currency, between $4,000 and $5,000.

CHAIRMAN: What was the rate of exchange? A. About 95% or 100%.

Mr. ROBERTSON: When did that bridge go down, before this construction now referred to? A. Between the (413) 28th of October and the 1st of November, 1891.

Q. When did they begin the work of reconstructing the bridge? A. Immediately after.

Q. Was it immediately after the carrying away of the bridge that this considerable reduction on the general construction force was made? A. It was.

Q. When was this bridge completed? A. In the month of December, 1891.

Q. Going on to the month of February, 1892, can you state how many men were employed on construction in that month? A. In February, 1892, I could not state.

Q. I say about how many? A. On construction work, except laborers employed by contractor who had contracted to grade one kilometer near Sucre, there were employed in February about 150 men.

Q. You say that you think the contractors took the contract for the construction of one kilometer? A. Two kilometers were contracted for.

Q. What part of the construction did they contract for? A. Clearing and grading and track excavation.

Q. What two kilometers? A. One east and one west of Sucre.

CHAIRMAN: Q. Can you give us the number of the kilometers? A. Yes; somewhere between K. 33.500 and 35.500.

Q. Do you know how many men the contractor employed? A. About?

Q. Please state? A. The number varied very much. Do you want the average number?

Q. Yes; on these two kilometers. A. Well, I would say that at certain periods he had not over ten men, and on (414) other days he had as many as 75 at work.

Q. Do you know about what the average was? A. I do not know. I have an idea.

Q. I want your best recollection as to the average. A. Allow me to say that I hesitated to answer the question,

because I did not wish to answer any question unless I was positive on the point.

Mr. STINE: Q. That is very laudable; but please only state what you know. You have developed a marvelous memory already. Please do not guess at it. A. It would be guess work to tell the average.

Mr. STINE: Q. For you to tell the average. A. It would be guess work for me or any living man.

CHAIRMAN: Q. Can you give me the total number of cubic yards on these two kilometers? A. I may say that they did not take the work by the cubic yard; they took the contract for grading the whole kilometer. They came down from the interior; they were men that had been employed previously by Mr. Cherry. They simply walked over the line and judged how much they would do it for.

Q. Did they know the quantity of the grading to be done? A. I suppose they looked at the profile for two or three minutes.

Q. Were there any centre stakes? A. There were none set.

Mr. STINE: Q. You did not know what the total of cubic yards was on the two kilometers when the two contractors took up the work? A. I can answer approximately (415) I do not know positively.

Q. You said you did know. A. I could certainly tell from the profile.

Q. Well, go ahead, then, and state it. A. Between 10,000 and 12,000 cubic yards per kilometer.

Mr. STINE: Q. How long were they working on that, these contractors? A. About three or four months.

Q. Can you state exactly? A. No, sir.

EXAMINATION CONTINUED BY MR. ROBERTSON:

Q. You say that it would be impossible, except by guess work, to get the average number of men employed by these contractors during the month of February, 1892. Can you state whether that average amounted to as many as 35 men per day for that month of February? A. I should say they employed an average of 40 to 50 men.

Q. Is that mere guess work on your part? A. No; it is the result of reflection on the subject, because I was familiar with it, saw the work, talked about it and paid for it.

Q. That average was for the month of February? A. No; I mean that it was the average number of men employed by these contractors who undertook the clearing and grading from the time they began until they ceased work; the average was between 40 and 50 men.

Q. I wish you to state exactly as possible the time which this average number of men was employed on the work. You state that it may have been so many months. Please reflect and state it closely. A. Three and a half months, I think, would be the best approximation.

(416) Q. Between what dates do these three and a half months run? A. From September, October, November up to the middle of December, 1891.

CHAIRMAN. Q. What proportion of the road did they include in their contract? A. They cleared two kilometers, and the grading was confined to one kilometer, of which they did, I should say, about 40% of the total grading on the kilometer lying to the west of Sucre.

CHAIRMAN: Q. Was the clearing heavy timber or light? A. About as heavy as any encountered by the Company.

CHAIRMAN: Q. What was the average rate of clearing paid by the Company? A. The clearing was about fifty feet wide; the price per kilometer was about $250 C. C., or less.

Mr. ROBERTSON: Q. What did you pay them for grading work? A. We paid them for grading in proportion to the quantity performed by them.

Q. I mean by the yard. A. We did not pay them by the yard. They undertook the grading on these two kilometers.

Q. Were they paid proportionately for what they had done on grading? A. Yes.

Q. What were they paid? A. In answer to that question I would say that it was a long time ago, but I should say they were paid about $5,000 or $6,000, Colombian currency, for the 40% of one kilometer, but they were overpaid.

Q. I understand you to say that they did about 40% (417) of the grading. Was that 40% of one kilomter, or 40% of the two they had contracted for? A. 40% of one kilometer.

Q. And you say that you overpaid them? A. Yes.

Q. To what extent? A. About $1,500 or $2,000 C. C.

Q. How did that happen? A. Well, it happened in this way. These men employed laborers and paid them at the same rate as the Company. The work undertaken by them was out of proportion to what they were able to perform, consequently they got in debt to their men, and the Company overpaid them in that way in order to help them out.

Q. That is in order to let them pay their men? A.

Yes. The fact is we did not know they were overpaid until after. It may have been less than $2,000.

Q. After the 1st of March, 1892, was there any increase in the construction force, if so, please state to about what extent and when such increase commenced? A. What occurred between the 1st of March and the 10th of May, 1892, I know nothing about, because I was absent.

Q. Where were you, then? A. At my home in Virginia.

Q. Did you arrive back at the Company's road on the 1st of May? A. On the 10th of May.

Q. Did you then resume your duties as construction engineer? A. I did.

Q. How many men did you find engaged in construction work when you returned on the 10th of May, 1892? A. A few more than when I left.

Q. Well, about how many in the aggregate? A. Between 150 and 200 men, probably.

Q. Where were they working? A. They were working near Sucre.

(418) Q. On this new work referred to? A. On K. 30 and 35.

Q. Were they working on any part of the road which these two contractors undertook to build and complete? A. They were.

Q. Was there an increase or decrease of men employed on construction after you reached the road about May 10th, 1892? A. There was an increase.

Q. When, and to what extent? A. The increase began as soon as I returned to Buenaventura, and continued.

Q. And to what extent did they increase, that is, to how many men in the aggregate did it bring the number? A. I do not know positively, I can state between extreme limits; the number would make between 250 and 450.

At this point the chairman said that if it was convenient we would adjourn the examination at the present time, as Mr. Schramme and Mr. Stine lived out of town.

The meeting adjourned at 4:30 p. m. until 10:30 a. m. the following day.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Fourteenth Session.

(419) Held at 30 Broad Street, on Wednesday, the 28th day of July, 1897, at 10:30 A. M.

EXAMINATION OF MR. CARTER CONTINUED.

Present: Commissioners, attorneys and counsel as before.

The Chairman called the meeting to order at 10:40 A. M., and called Mr. Carter to resume his place on the witness stand.

EXAMINATION CONTINUED BY MR. ROBERTSON.

Q. How many men do you say were employed on construction during the month of July, 1892? A. Between 250 and 300, I presume.

Q. How many were there employed in August, 1892? A. I could not tell positively; if you will allow me I will explain that it is because I was engaged on the surveys then.

Q. In the month of August? A. Yes; I was in the interior. From the end of July up to that time my camp was at farthest 12 miles from the works, but during the month of June my camp was about San Jose.

Mr. STINE: Will you ask the witness to explain?

Q. Please explain more clearly? A. From May to the end of July I was within 12 miles of the work. After that (420) to a place callen Juntas, about 12 miles east of San Jose, where I was located about a month.

Q. How far from the works were you then? A. 12 miles.

Q. Do you mean to say that you were at San Jose when you were 12 miles from the works? A. I said that I was within 12 miles during the time from the 10th of May until the 31st of July.

Q. Please do not put it that you were within 12 miles, state the distance? A. Well, from May to the 1st day of July I was within 1 mile of the works.

Q. When you say you were within 12 miles of the works you mean that you were not beyond 12 miles thereof? A. I mean that I was not farther than Juntas which is about 20 kilometers from San Jose.

Q. Will you indicate whether you saw the works during the month of July, 1892? A. During the month of July I was within 12 miles distant from the works during the whole of that month.

Q. Did you visit the works during that month? A. I did.

Q. How frequently? A. I have positive recollection of visiting the works only once in July.

Q. When was that? A. Between the 20th and the 31st of the month.

Q. And about how many men did you find working there then? A. I did not count them; I could not say how many I found there.

Q. Say about how many? A. I did not visit all the works at that time, hence I am not prepared to say how many men there were at work on construction.

Q. What part of the works did you visit? A. About Sucre.

Q. Was new construction going on elsewhere? At It was.

(421) Q. Whereabouts? A. Between Sucre and San Jose and beyond San Jose.

Q. Did you visit these last places where new construction was going on in the month of July, 1892? A. I passed over it going to Sucre from Juntas.

Q. Did you see men engaged there? A. I did.

Q. Do you remember about how many there were? A. I should say that the number of men I saw in that section at work would not exceed 300 men, or 250 possibly. I could not say exactly.

Q. In that visit to Sucre did you pass over all the new construction that was going on? A. I did not.

Q. What part did you pass over? A. The portion lying between a point called Cumbamba and a mule road which is now a part of the line on an abandoned route.

Mr. Stine asked that the latter part of the answer be stricken out as not being responsive. Mr. Robertson said it was descriptive.

After some discussion between Mr. Robertson and the attorney for the Company, the chair ruled that the latter part of the answer be stricken out of the record; namely, the words, "which is now part of the line on an abandoned route."

Exception on the part of the Government.

Q. How long was this piece of road between Cumbamba and the mule road? A. About one kilometer.

Q. Is that now a part of the route of the road? A. It is not.

Q. How do you account for that? A. Because a more favorable route was discovered afterwards.

Q. When? A. In July, 1892.

(422) Q. In the month of August about how many men were employed on new construction? A. I do not know.

Q. Why not? A. Because I was in the interior some 50 or 60 miles from the work.

Q. When did you return from the interior to the road? A. The latter part of the month of November or in December.

Q. Do you mean the latter part of November or the latter part of December? A. I mean the latter part of November or the beginning of December.

Q. Well, about how many men did you find engaged on new construction when you returned in November or December, 1892? A. When I returned in December I did not pay particular attention to the number of men who were on construction.

Q. Did you go over the line? A. A portion of it.

Q. What portion of it? A. At San Jose. The portion contiguous to San Jose.

Q. Was that portion where new construction was going on, or were there other portions where new construction was going on? A. There were other places where construction was going on.

Q. Where was the principal construction going on? A. The men were distributed along that section of the road between Sucre and San Jose, approximately about 2 kilometers.

Q. I asked you upon which portion the principal construction was going on? A. Upon that portion of the road between Sucre and San Jose.

Q. Now, did you go over that portion of the road when you returned in November or December? A. Not all of it. (423) Q. How much of it did you go over? A. Possibly about half of it.

Q. About how many did you see were engaged on construction? A. I did not see more than 150 men.

Q. That is about the outside limit? A. That is about the number that I saw.

Q. Did you remain along the line for any length of time after your return in November? A. Most of the time I spent in Buenaventura.

Mr. STINE: Q. Do you mean December? A. Well, I mean November, or the beginning of December.

Mr. ROBERTSON: Q. I will make that clear. Did you go over the line in the month of December or November, 1892? A. I did.

Q. In which month? A. December.

Q. Over the whole length of the line? A. No, not over its entire length.

Q. Please state what part you did go over. A. I went

over the line from Buenaventura up to Sucre, and a further distance beyond, I cannot recall how far.

Q. At what kilometer from Buenaventura is Sucre? A. About K. 34.500.

Q. How many times did you go over that part of the line in December, 1892? A. I do not remember.

Q. Do you remember whether you went more than once? A. No; it is quite possible I went half a dozen times. I have no recollection on the subject.

Q. Do you remember whether it was but once or not? A. I do not.

(424) Q. What part of December did you go over the line? A. I do not recall.

Q. About how many men did you find engaged on construction work when you went over the line? A. I did not see more than I stated that I saw on previous occasions, namely, about 150 or possibly 200.

Q. Do you know about how many men were employed on new construction in the month of December, 1892? A. I do not.

Q. I do not mean exactly; about—I mean about the number? A. About 250 or 300 men, including bridges and everything relating to construction.

Q. Now, going forward to the month of January, 1893, do you know about how many men were employed in construction work in that month? A. Just here, before answering the question, what do you call construction work, anything west of Sucre? Because I want to be clear on that point.

Mr. STINE: It strikes me that it is rather late in the day to say that, after testifying for two days to the number of men employed on construction. I object to speeches on the part of the witness.

CHAIRMAN: The Chair, while giving permission to the witness to ask the question, was under the impression that it involved the question of how much road was received, and whether it was construction or reconstruction. It seems to me that the witness should be able to state how many men were upon construction, whether it was upon road received by the Company or not.

Mr. CARTER: I will respectfully inquire if, after the road had been received up to Sucre, men were put to work on the portion of the road west of Sucre, whether these men were called on construction.

(425) CHAIRMAN: The question involves a technical point.

Mr. CARTER: I will say that the road had been received by the Government previously, and all I want to

know is, in answering the question, whether I am to include in construction men at work on that portion of the road or not?

Chairman said they should not be included in construction.

Question repeated, namely:

Q. Do you know about how many men were employed on construction work on the month of January, 1893? A. I do know about how many.

Q. Please state it. A. 150 to 200 men.

Q. Do you know where they were employed? A. From K. 34.500 up to about K. 37.500.

Q. Do you know about how many men were employed on construction during the month of February, 1893? A. About the same number.

Q. And at what point? A. On the same section of the road.

Q. Do you know how many men were employed in March, 1893? A. I do.

Q. State it. A. About 50 or 75 men.

Q. Do you know when the number was diminished from about 150 men to 75 men? A. In the latter part of the month of February or early in March, 1893.

Q. How many men were so employed in April, 1893? A. 40 or 50 men, exclusive of the men that were employed (426) in the building or erecting a steel bridge at Sucre.

Q. About how many men were engaged in construction in May, 1893—about? A. 40 or 50 men—maybe 60—possibly 25. When I said 40 I struck the average.

Q. In the month of June, 1893, about how many were so employed? A. From 25 to 50 on the average.

Q. You mean that the number would average between 25 and 50? A. The average would be between 25 and 50; that is what I should have said, although my words did not convey that meaning.

Q. How many were so employed in the month of July, 1893? A. About 50; not more than 50, I should say.

Q. Were they exclusive of bridge builders? A. They had left long ago.

Q. When did they finish and leave? A. About the 15th of February, or the latter part of the month of February. I refer to the men who were building the steel bridge in Sucre.

Mr. STINE: Q. When did they leave? A. About the 15th of February, or about the end of the month, when the work was finished.

Mr. ROBERTSON: Q. So that the number of men which

you have given us for March, April, May, June and July were not inclusive of bridge builders, because bridge builders were not there in those months? A. That is it.

Q. About how many men were so employed on construction in the month of August, 1893? A. Fifty or seventy-five men; possibly a few more or possibly a few less.

Q. How many in the month of September, 1893? A. Seventy-five to one hundred on construction.

Q. How many in the month of October, 1893? A. About the same number.

Q. How many in the month of November, 1893? A. Before I answer that question I want to make an explana-
(427) tion to show in what sense all these answers should be taken, if the Chair will allow me.

CHAIRMAN: Q. Certainly. A. I want to show that by construction I refer to that section of the line east of Sucre, because I call it construction work from Sure eastward, because the line had been officially received to Sucre.

By the CHAIRMAN: Q. At what time had it been officially received to Sucre? A. Probably in July, 1892.

Mr. ROBERTSON: Q. How many in the month of November, 1893? A. About 50.

Q. About how many were employed in construction in the month of December, 1893? A. About the same number, as near as I can recall. Possibly less; may be more.

Q. How many in January, 1894? A. About the same number.

Q. About how many in February, 1894? A. I do not think the number of men employed in this month that we have just referred to—

Mr. STINE: Q. Please answer the question. A. Fifty men. I mean to say about 50 men.

Mr. ROBERTSON: Q. From the month of February, 1894, on, for how long a period did this number of about 50 men employed on construction continue? A. From the month of February on?

Q. Yes. A. In the latter part of the month of February the number began to increase.

(428) Q. To what extent did it increase from that time on, and in stating the extent to which the increase went, please state any separate increases from month to month, if such took place? A. For the months of March, April and May, 1894, the maximum number of men on construction (when I say construction, I mean east of San Jose, because the road had been officially received up to San Jose in 1893), did not exceed 80 men, possibly 90, at any time during the same month.

Q. What would be the minimum number of men so engaged in those months? A. Sixty men.

Q. Will you state in or about the month of May what decrease or increase of men on construction work took place? I mean May, 1894? A. In the month of May they remained stationary, more or less. The men were not materially reduced or increased during the month of May, as far as I can recall.

Q. I stated in or about the month of May inasmuch, as you specified in your last answer the months of March, April and May? A. That is because I can state positively the number of men during the months of March, April and May, 1894. There is no "about." I stated the exact number.

Q. Taking the month of June, 1894, how many men in construction that month? A. About 75 men.

Q. How many were so employed in July, 1894? A. About the same number. When I say about the same number it may mean anywhere from 50 to 100 men.

Q. About how many were so employed in August, 1894? A. About the same number, I suppose, as far as I can remember.

Q. About how many men were so employed in September, 1894? A. About the same.

(429) Q. About how many were so employed in October, 1894? A. About the same number.

Q. For about how many months in 1894 did this average of about 75 men continue? A. Probably about six or seven months.

Q. Name the months, please? A. March, April, May, June, July, August, September.

Q. And from October to the close of the year 1894, about what was the average employed on construction. A. Fifty or 75 men, more or less.

Q. Do you mean that there was a decrease from about October to the close of the year? A. I am rather inclined to say that there was, so far as my memory serves me. It seems to me that there was rather a decrease from that time to the end of the year.

Q. Taking the month of January, 1895, about how many were so employed in that month? A. There were about 50 or 60 men.

Q. And in February, 1895? A. In February about that number; rather less than more.

Q. How long did that number of men (about) continue in 1895? A. I do not know.

Q. Have you any reason for not being informed as to that fact? A. I have.

Q. Please state it. A. Because I left the service of the Company on the first day of March, 1895.

Q. And have not been employed by it since? A. I have not.

Q. Did you leave the Company at that time? A. I did not. I went up to Cali and stayed for 2 or 3 months.

Q. When did you last go over the Cauca Railway? A. About August, 1895, though it may have been August, 1896. I had occasion to return to Colombia, but, strangely, I cannot for the moment recall in what year it was. It (430) may occur to me later.

Q. Did you go over the road in the year 1895? A. I did.

Q At what time? A. I came down from the interior in April, 1895. I am quite sure of that. I left Cali for Buenaventura in April, 1895.

Q. How did you travel from Cali when you started? A. On horseback to the end of the track.

Q. What distance was that? A. About 50 or 60 miles.

Q. By the end of the track, do you mean the new completed road? A. I mean the station at San Jose.

Q. And how did you get from San Jose to Buenaventura? A. By train.

Q By the Cauca Railway Co.'s train? A. Yes.

Q. Now, up to the time you left the service of the Company, to what point had the railway been completed, so that it was ready as a road for traffic? A. Up to San Jose K. 36.740.

Q. At what time was the road completed to that point? A. September first, 1893.

Q. At the time you left the service of the Company, how much, if any, construction of any kind had been carried east of San Jose? A. About 5 kilometers portionally completed, that is the earthwork and embankment for five kilometers, and the clearing for about 6 or possibly 6½ kilometers.

Q. Do you mean that the clearing was for 6 or 6½ kilometers east of San Jose? A. That is so. I mean that the clearing had been made east of San Jose 6 or 7 kilometers.

Q. And of these cleared portions about 5 kilometers had been partly graded? A. Yes.

(431) Q. Now, to what extent had the grading been partly done on these 5 kilometers? A. About 30,000 cubic yards had been moved.

CHAIRMAN: Q. Of what total? A. I am not prepared to say at present.

Mr. ROBERTSON: Q. Have you figures by which you could state definitely? A. I have data from which I could so state.

Q. Can you refer to those data and answer the Chairman's question definitely? A. Referring to those data would require some time and make calculations.

Q. The Chairman inquires the total cube of those five kilometers on which a part of the grading had been done.

Mr. CISNEROS: You have on the profile the quantities to be moved just as if none had been moved.

Q. Have you written there since then the amount of cubic yards moved and to be moved? A. I have not.

Q. But you could do it? Q. Certainly I will.

Mr. ROBERTSON: Q. How long would it take? A. About three hours, probably.

Q. Can you state approximately about the proportion of grading that had been completed on the whole of these five kilometers? Now, what I mean is whether it was half done, three-fourths done, or one-third done, etc. A. About one-half done, as far as excavation and embankment, I should say.

Q. Had any ties been laid on these five kilometers east (432) of San Jose? A. There had not been.

Q. Had any culvert or bridge work been done? A. None.

Q. Was there any culvert or bridge work in these five kilometers? A. There was.

Q. Important bridge work, or minor bridge work? A. Yes. I mean important bridge work—a bridge over the Dagua, immediately at San Jose.

Q. Has it not been done? A. No.

Q. Now, after the work had started from the K. 27.100, to what point was the road completed when the first Government acceptance of the road, as having been opened for traffic, took place? A. K. 30 about.

Q. What is that point called? A. Caballette.

Q. And was traffic actually opened to that point at the time of acceptance? A. It was not.

Q. Please explain why it was not. A. Because there were no terminal facilities at that point called Caballette, and no station house nor side-tracks.

Q. What was the general character of the country through which that road ran from Cordova to San Jose? A. Rugged.

Q. Was it a settled country, or a country which had still to be settled? A. Along the banks of the river there were a few settlements, but they were of no consequence

at all. You might say that the country was not worth settling.

Q. Was there no opportunity for local traffic between Cordova and San Jose? I want to get at the character of the country. A. I see I misunderstood the question. The country had no resources at all; there could be no local traffic.

(433) Q. In point of fact, where did the traffic come from that was to the east of Cordova? A. From the Cauca Valley.

Q. And how was that from San Jose to the east? A. About 50 or 60 miles.

Mr. CISNEROS: Q. Do you say that the traffic there was only from Cali? A. The local traffic is of no consequence.

Mr. CISNEROS: Q. Is there no other traffic at all? A. There is.

Mr. CISNEROS: Q. Which is it? A. Local traffic.

Mr. CISNEROS: Q. I mean there is import and export. The export is from Cauca and the import from Buenaventura, is it not so? A. Quite so. There was traffic over the road in either direction; if anything was imported into the Cauca Valley, into that section of the country to the east of Buenaventura, which is tributary to that railway to the extent of 150 miles east of Buenaventura, and all exports from the interior passed over the Cauca Railway one way or the other.

Mr. ROBERTSON: Q. Now, between the Cauca Valley, which you say begins from 50 to 60 miles to the east of San Jose and Cordova, is the country such as to afford local traffic? A. It is not.

Q. When did you say the road was received by the Government up to Caballete? A. Some time in July, August or September—which of those months I do not recall.

(434) Mr. STINE: Q. What year? A. 1891.

CHAIRMAN: Q. What traffic was heaviest—import or export? A. I rather think that the import exceeded the export. The only exports were coffee and hides.

Mr. ROBERTSON: Q. In point of fact then, there was no local traffic east of Buenaventura going west? A. A little there was.

Q. When did that begin? A. That really began before the road was officially received, because the traffic I speak of was merely local traffic, and did not amount to anything at all one way or the other.

Q. What do you mean by local traffic? A. I mean that a few people living in that section of the country who

had occasion to come to Buenaventura used the train for that purpose. As I have stated, this country was very sparsely settled, and the local traffic I speak of consisted of the few passengers and freight belonging to the people who lived just along the river. That is about all of it.

Q. How did they get to the road? A. To what road do you mean?

Q. I mean the railroad. A. The people lived along the banks of the river. They walked or they came in a canoe. Some lived close to the track. Others would come to Caballete by the river. They went to Caballete or Santa Rosa, or any other point where the train happened to be stopped while the road was in process of construction.

Q. Were the trains run on scheduled time? A. No, nothing of that kind at that time; simply a construction train.

(435) CHAIRMAN: Q. The only material point seems to be whether or not it had a material effect on the revenue of the road. Did it or did it not? A. Entirely immaterial, and not worth consideration.

Mr. ROBERTSON: Q. Was there ever at Caballette any traffic except of the nature to which you just referred? A. None.

Q. So that, in point of fact, it never became a regular point for the reception or distribution of freight or passenger traffic? A. Never.

Q. Then, after the road had gone forward beyond Caballete, to what point was it constructed when the next delivery or acceptance of the road was made? A. Up to Sucre.

Q. When was that? A. If I remember, it was along in June, July or August—probably July—1892.

Q. There was no local traffic at Sucre? A. Nothing of any consequence.

Q. Was there any approach so that freight could reach the station at Sucre? A. There was an approach so that freight could have reach Sucre station if there had been a station.

Q. Was there no station at Sucre? A. No station that would serve the purpose of storing freight.

By CHAIRMAN: Q. By station do you mean building? A. I mean freight warehouse.

Mr. ROBERTSON: Q. Were there any facilities for handling freight at all at Sucre? A. Not adequate. There were some.

Q. Please describe them. A. In the first place, there (436) were no side-tracks, no turn-tables, no sidings. The engine would come into Sucre pulling the train and go back

pushing the train. There was no building except one possibly about 25 by 35 feet. One-half the building was occupied by the owner, a man by the name of Jimenez, and the remainder was leased by the Company. That was their freight and passenger depot.

Mr. ROBERTSON: Q. In point of fact, did any traffic make Sucre a point of departure for Buenaventura or a point of departure from Sucre to the Cauca Valley? A. Not over one or two per cent. of the total tonnage that passed over the road.

Q. What was the next point to which the road was delivered and accepted? A. San Jose.

Q. What were the facilities for freight and passenger traffic there? A. They were about equivalent to those at Cordova that the Company found there.

Q. When was the acceptance made? A. About the 1st of September, 1893. I will correct that statement; the road was opened to traffic on the 1st of September, 1893, but was not officially received and measured until the month after that. It may have been six weeks.

CHAIRMAN: Q. What kilometers? A. K. 36.740 about.

Mr. ROBERTSON: Q. Was there an approach from the mule road to the station at San Jose? A. There was.

Q. When was that completed? A. That approach was completed when it was announced that the road was opened to traffic from Buenaventura to San Jose, about the (437) 1st of September, 1893. The approach was a very short one, because the mule road runs within 150 feet of the station building.

Q. Were there approaches from the mule road to the railway at all the points to which the road had been built when the various deliveries and acceptances had been made? A. There were not.

Q. Please explain in which instances there were approaches. A. Well, there is no place to refer to.

Q. Describe the kilometer. A. At K. 31 there was a a ravine called Piedras Piedras, but there is nothing but forest there. It is a point mentioned on the road as a reference. Then there is Bodegas, one kilometer further on; there is no access to the mule road there. The next point that has any name is Sucre. There is an approach there to the track which runs within 300 feet of it, and at San Jose there is an approach, of course.

Q. What about Caballete? A. That was the point farthest removed from the mule road; the only approach is by the river in a canoe.

Q. How near can you get to the line in a canoe at that point? A. About 300 feet.

Q. Can you get freight to the road by that means? A. You could not. You might get a little, perhaps 300 or 400 pounds in a canoe, but there was no means of bringing it to the station. There was no station there; it was simply a place called Caballete, a ravine.

Q. Are you familiar with the amount of construction work done between K. 27.100 and K 29.750? A. I am.

Q. Have you made any calculation as to the amount of that work? A. I have.

Q. Please look at this paper and see whether it con-
(438) tains calculations that you have made? A. It does. It contains the calculations that I have made.

Q. By looking at that paper could you tell what was the extent of the expenditures from K. 27.100 to 29.750?

Mr. STINE: One moment; extent of the money, do you mean?

Mr. ROBERTSON: I mean the cost of construction.

Mr. STINE: How is he to know?

Mr. ROBERTSON: From this estimate made by him.

Mr. STINE: Did he make it at the time he was on the road?

Mr. ROBERTSON: He has made it now.

Mr. STINE: Are you going to submit as evidence?

Mr. ROBERTSON: Yes.

Mr. STINE: Because I don't propose to let him have it all the time. He can refresh his memory if he likes.

Mr. ROBERTSON: Q. By looking at that paper can you state what was the expenditure on construction from K. 27.100 to K. 29.750? A. I can, approximately.

Q. Please state it approximately. A. Approximately, $30,000, not including the San Cipriano bridge. This is the approximation of the total expenditure of the Company upon the section referred to, including the clearing, grading, earthworks, cross-ties, ballast, trestle bridges, track-laying, transportation, incidental expenses, local expenses, administration, shop expenses, salaries of employees on construction, their traveling and maintenance expenses.

Q. Colombian currency or gold? A. Gold.

Q. You say exclusive of the San Cipriano bridge? A. Yes.

(439) Q. Now, do you know what the San Cipriano bridge cost? A. Approximately.

Q. State that, please. A. About $12,000, gold.

Q. Please give us, then, the total cost, as you approximate it, of the construction and completion of this section,

inclusive of finishing the bridge structure, and everything that went into the road. A. $40,652.58.

Mr. CISNEROS: Q. Do you mean that this is the cost of completing the K. 2.650 from the end of the track K. 27.100 to K. 29.750, and including the San Cipriano bridge at K. 26? A. That is right.

Mr. ROBERTSON: Q. What was the distance between K. 29.750 and Caballete? A. 430 meters to the point called Caballete.

Q. Have you any data by which you can state the approximate cost of completing construction, embracing everything that went into construction of these last-mentioned 430 meters? A. I have not estimated separately the cost of those 430 meters.

Q. Have you any data by which you can make that estimate now? A. I have.

Q. Please refer to it and make the estimate. A. It would occupy a great deal of the time of the Commission. It would take several hours to do, because I have included these 430 meters in the next section, which begins at K. 29.750 and extends to San Jose.

Q. By the calculation based upon this last section which you refer to, could you not, by deduction or proportion, state what the cost of construction was on the 430 (440) meters to which you refer? A. It would not be a matter of proportion. The estimate which I make is based on the cost from K. 29.750 up to San Jose. The total cost, referring to this estimate for that section, is $133,546.55, gold, for Ks. 699. Then I find that the 430 meters would cost at the same rate $8,215.15. I have not checked the calculation, but it is approximate.

Q. Now, do the figures show the total cost from K. 27.100 to Caballete, which is at K. 30? A. The total cost from K. 27.100 up to Caballete would be $48,867.73, including the San Cipriano bridge, which is not on that section of the road.

Q. Now, you say that the San Cipriano bridge which is not on that section of the road. Is it to the east or west of that section? A. It is to the west at K. 26.

It being 1 p. m. the chairman said that the meeting would adjourn until 2 o'clock for luncheon.

At 2:07 the chairman called the meeting to order.

CHAIRMAN: In continuing, I wish to call attention to the fact that I have just received a telegram from the Chairman of the Nicaragua Canal Commission at Washington asking me to attend a meeting at 11 A. M. to-mor-

row. I have anticipated the the consent of the Commission in this matter, and replied accepting the appointment, and I will ask the Commission to adjourn at 3:30 to-day over to-morrow, if agreeable. Both representatives said that it was quite agreeable.

EXAMINATION OF MR. CARTER CONTINUED BY MR. ROBERTSON:

Q. Do you remember whether the San Cipriano bridge was in that part of the road which Mr. Cisneros constructed when the railway was in his hands? A. It was.

Q. Do you know how the bridge came to be absent? A. I do. It was carried away by a flood.

(441) Q. Do you remember when? A. I do. About the end of October, 1891.

Q. Now, take up the section from K. 29.750 up to San Jose, which was 36.740, and state whether you have calculated the approximate cost of total construction work on that section. If you have, please state the estimated approximate amount. A. I have calculated the approximate amount on that section, and it is $133,546.55.

Q. That includes the 430 meters which you have taken from K. 29.750 to Caballete? A. It does.

Q. Now, I understand you to say that there was some construction work done west of K. 27.100, and some construction work done east of San Jose. Is that true? A. There was construction work done east of San Jose.

Q. How about construction work done by Mr. Cisneros and not completed west of 29.750? A. There was some.

Q. How much had been done west of K 29.750 by Mr. Cisneros when the road was turned over to the Company? A. From K. 29.750 west as far as K. 27.100 the road was portionally constructed, and I estimated that about ¾ of the earthwork on that section had been done prior to January 1st, 1891.

Q. You mean prior to the turning over of the road to the Company? A. Yes.

Q. Go forward to the point east of San Jose Was there not some incompleted construction work done there; if so, please state how many kilometers? A. Going east of San Jose about five kilometers of the road was partly completed—graded and cleared.

Q. Now, have you estimated what the portion between K. 27.100 and K. 29.750, and the portion of San Jose east, both of which portions were incomplete, were equivalent to incompleted work? A. I have.

(442) Q. Please state them separately, and then state the gross amount. Take 27.100 to 29.750 first, and then the

next? A. I estimate that between K. 27.100 and K. 29.750 the work performed was equivalent to the construction *in loto* of 1K. 570 m.; that is to say, that of these K. 2.650, work done by the Cauca Company, and the work done from San Jose eastward, which constitutes clearing of about six kilometers, and the portional grading of about five kilometers is equivalent to about K. 1.306 of completed road.

Q. Please add the two incomplete portions together and state what they aggregate? A. K. 2.876.

Q. Now, what is the aggregate approximate cost of these two incompleted portions? A. The answer to that question is obtained by summing the cost of the K. 2.650, which has been previously stated, including the San Cipriano bridge, which is not in that section, $40,652.58, and the cost of the work done east of San Jose, according to my estimate, $15,328, which make a total in gold of $55,980.58, two together

Q. Now, please sum up your estimate of the total cost of construction work done from K. 27.100 to K. 36.740, and do not include the bridge in this.

Mr. SCHRAMME: Is the Sucre bridge in?

Mr. CISNEROS: Certainly. That is 175 feet span; the San Cipriana bridge is 210 feet span.

Mr. SCHRAMME: Thank you.

A. (Mr. CARTER): $162,120.22, excluding the San Cipriano bridge, representing the cost of the work from K. 27.100 up to San Jose, K. 36.740.

Q. Now include the San Cipriano bridge; what is the aggregate? A. $174,199.13.

Q. Now, please add the distance from K. 27.100 to K. 29.750?

(443) Mr. CISNEROS: One moment, Mr. Carter. You have stated that from K. 29.750 to K. 36.740 there is K. 6.990. A. That is so.

Mr. CISNEROS: Q. You have stated also that the portion of the road the Government delivered to Mr. Cherry included from K. 27.100 to K. 29 750 is equivalent to kilometers of completed road 1.570. You stated also that the work beyond San Jose computed as completed work would represent K. 1.306. What Mr. Robertson wants is that you add these three portions K. 6.990, K. 1.570 and the K. 1.306, and state what they amount to and what they are equivalent to in completed kilometers. A. The amount of these distances is K 9.866 completed work.

Q. There was no other construction work done on that road than this aggregate that you have given us during the

time you were employed by the Company? A. There was no other during the time I was there.

Mr. SCHRAMME: Q. Do I understand that thereby you concede that this Company has built K. 9.866? A. That is what I intended to convey.

CHAIRMAN: Q. At what did you state the total cost of them? A. $174,199.13, including San Cipriano bridge.

Mr. ROBERTSON: In stating the cost of these separate sections which you have testified about and the gross amount which you have given us, have you included cost of provisioning and maintaining the men, superintendence, traveling expenses, etc.?

CHAIRMAN: The witness had better refer to his paper and read it.

Mr. STINE: Objected to the words "etc.," as not being explanatory.

(444) Mr. ROBERTSON: Q. Please state what you have included? A. I find a note appended to this estimate showing local administration, shop expenses, salaries of employees on construction, their traveling expenses, maintenance, explosives and tools, are included.

Q. Now, what do you mean by maintenance in that connection? A. By maintenance I mean subsistence of employees engaged on construction.

Mr. CISNEROS: Q. What percentage is that under construction? A. 32¾ per cent.

Mr. ROBERTSON: Q. We had better have that clear. Now please state what percentage of the cost in gross is represented by these items, local administration, shop expenses, salaries of employees on construction, their traveling expenses and subsistence, explosives and tools? A. About 33 per cent., the figures are 32.795 per cent.

Q. Have you made any calculation as to the cost of maintenance and repairs of the road east of Cordova? I mean have you made any estimate of repairs upon the track delivered by the Government to Mr. Cherry from K 27.100? A. I have made an estimate of the cost of repairing the line from Cordova 20K. 240m. up to K27.100, the end of the track.

Q. That is to say, you have included the cost of repairs that were needed at the time the road was turned over to the Company? A. I have. That is what I mean.

Q. Please state that. A. $19,367. Do you want the items.

Q. Yes. It is as well. A. I mean to say that the end (445) of the track, which was K. 27.100 when delivered to the company, included clearing K. 6.860 at $250 per kilometer, making $1,715.00.

Mr. CISNEROS: Q. (Interruption.) Allow me a question. I see that you put $250 per kilometer of clearing, whereas clearing cost more in the other items. Why is that? A. Because that part of the road had been cleared five or six years prior to January 1st, 1891; hence the clearing was very little labor, being the recent growth of the brush during five or six years.

Mr. ROBERTSON: Q. In fact, have you not testified that when you went over that part of the road in January, 1891, you went over it in a hand car? A. Yes. Further items making up $19,367 gold are as follows: Removal of landslides, $1,200; trestle bridges of wood, $19,845; cross-ties, $6,174; ballast, $7,512; labor of changing cross-ties, $2,287; total, $38,733; Colombian currency, with the exchange at 100% premium, makes American gold $19,367. The San Cipriano Bridge is constructed on this section, but has not been included in the calculation.

Mr. CISNEROS: Q. Why did you not put the San Cipriano bridge into the estimate of that section? A. Because San Cipriano bridge is new construction.

Mr. CISNEROS: And this is repairs of road already built.

Mr. ROBERTSON: Q Now, in making up your estimates of the cost of construction, and your estimates as to repairs, have you figured closely or liberally, or in what way?

Mr. STINE: I object to that questton. It is assumed that he has figured correctly. It is not good evidence, be-
(446) cause there is no way of judging if he is telling the truth or not.

Mr. ROBERTSON: He is under oath.

Mr. STINE: Men have made false statements under oath before.

Mr. ROBERTSON: When a professional engineer is making estimates he may pursue either a very close course or a liberal course. He may be actuated by a desire to minimize or magnify the cost of construction, and I wish to find out if he has pursued one course or the other.

Chairman allowed the question to be put.

A. My estimate is liberal rather than otherwise.

Q. Now, what do you mean by saying that you have been liberal rather than otherwise? Please explain to the Commission? A. I mean that the estimates that I have given represent rather more than the actual cost as I approximated it than less.

Q. Can you illustrate by referring to any particular instance where you have followed this principle of liberality? A. I can. Yes. For instance, I take the item of clearing from K. 29.750 to San Jose, which is K. 6.990. I estimated for clearing $500 C. C. per kilometer. I have no knowledge that the Company ever paid as much as half that for clearing. I can further say that clearing beyond San Jose was made by contract, at the rate of $200 per kilometer. I put $500, and call that liberal. With respect to grading, for instance, I have classified 30,000 cubic yards as conglomerate or cemented gravel out of the total of 73,600 cubic yard—namely, about one-third. In regard to classification that is liberal, as in my opinion there was considerable less than that quantity of conglomerate.

Q. Please state the cost of conglomerate? A. For instance, I put conglomerate at $2.20 per cubic yard, and loose gravel at 80 cents.

(447) Mr. CISNEROS: Q. Are these all the classifications you have made? A. I have made other classifications.

Mr. ROBERTSON: Q. Please go on, explain further on that head. A. I would say that considerable work, while I was in charge of construction, and a large percentage of the work done subsequent to March 15, 1893, cost 50 cents, and for earthwork the company paid 30 cents. In this item I have put it at 40 cents cubic yard. Loose rock I have allowed 80 cents for on the estimate, and that work has been done by special contract for 60 and 70 cents. Conglomerate did cost $1.75, and I have allowed $2.20.

Mr. CISNEROS: Have you allowed the same prices in all the estimates? A. No; the number is higher in some, because in my judgment the work cost more.

Mr. CISNEROS: Have you put any prices lower than that. A. None.

Mr. CISNEROS: Have you put some higher? A. One item, I have. In the repair of the road at Cordova and the end of the track. Removing landslides, $1 per cubic yard. That is relatively a higher price, because it is only loose earth, and the Company had the facilities for removal by hand-cars.

Mr. ROBERTSON: Q. Are there no other illustrations of your liberal method? A. I might cite the cost of trestle bridges. $15 per lineal foot is liberal rather than otherwise, because the Company has constructed wooden trestle (448) bridges, purchasing timber at a certain price, and hiring carpenters by the day, and the total cost of the contract, including the timber and the labor of the erection, only turns out about $10 or $11 per lineal foot. I have allowed $15 for the reason that a pile-driver was used, and

that costs a little more. In the case of the San Cipriano wooden bridge, the first bridge built by the Company at that point was carried away by flood, also the second and the third bridge. I have allowed $25 per lineal foot.

CHAIRMAN: Was there no false work? A. There was no false work, although the trestle bridge was built three times; not more than three times. I might say repaired three times, and some slight repairs a fourth time. I am positive of that.

Mr. CISNEROS: Q. Allow me one question. Is there nothing whereby you could say how much you have allowed for those repairs—namely, how much you have estimated the cost thereof? A. I have allowed $5,000 gold for rebuilding wooden bridge destroyed by flood.

Mr. ROBERTSON: Q. In the totals, where is that included? A. That is included in the Exhibit showing results of the operation of the road.

Mr. STINE: Have you testified as to that operation of the road? A. I have not. That is, I have not referred to the item.

Mr. STINE: Q. In order to avoid any possible mistake, please state how many times the Company repaired the San (449) Cipriano bridge. I refer to rebuilding. A. Three times.

Mr. STINE: Q. And partly rebuilding it once: A. That is my impression; yes.

Mr. ROBERESON: Q. Do you know whether or not the items "cost of construction, maintenance or repairs," to which you have referred heretofore in your testimony, were ever entered in the books of the accounts of the Company so as to be distinguished one from the other? A. I have no knowledge of that.

Q. Have you ever inspected the books of the Company that were destroyed by fire? A. No.

Q. You were asked yesterday by the chairman for certain points respecting the section of about two kilometers which was constructed under contract, and you made certain statements in response to that question. Do you wish to make any explanation of that testimony now? A. Possibly it was not understood by the Commission that although the earthwork was done only on one of these kilometers, that the clearing had been done on both of them, and what I stated to the Commission as having been paid to them included the cost of clearing both kilometers.

Mr. CISNEROS: Q. I thought that Professor Haupt asked you for the cubic yards of these kilometers. Have you that ready yet? A. No; I have not figured it up yet,

but I think it will be rather more than I stated. The kilometer west of Sucre was the heavier work. The cube on the two kilometers was about 20,000 meters, and on the kilometer west of Sucre there was about 16,000 cubic yards. That is only approximately.

Mr. ROBERTSON: We have come to the point now where probably it would be wise to adjourn. We have terminated our testimony on construction, and will open up a new field at the next session. Perhaps it will be advisable to adjourn now, as it will be convenient to the chair.

Mr. Stine, on behalf of the Cauca Company, said that they were quite ready to stay or go on, as might be convenient to the Commission.

It being then 3:15 P. M., the chairman declared the meeting adjourned until Friday, 11 A. M.

(Signed.) LEWIS M. HAUPT,
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER,
Secretary.

Fifteenth Session.

(451) Held at 30 Broad street, on Friday, the 30th day of July, 1897, at 11 A. M.

Examination of Mr. Carter continued and concluded with privilege of recall.

Present: Commissioners, Attorneys and Counsel as before.

The minutes of the previous meetings were not ready for signature.

The chairman called the meeting to order at 11:30 A. M., and called Mr. M. P. Carter to the stand.

EXAMINATION CONTINUED BY MR. ROBERTSON FOR THE GOVERNMENT.

Q. At our last session, Mr. Carter, you omitted to state the date when you last went over the road; have you been able to refresh your memory since then? A. I have.

Q. Please state it. A. It was in the summer of 1896.

Q. Did you find any construction work going on on the road at that time? A. I did not.

Q. Now, you have testified that you remember the men that were working on the road in the autumn of 1893—that is, in the months of October and November; and have stated that that there were in October, say, from 75 to 100 men, and in November about 50 men. Have you refreshed your memory in any way upon these points since our last meeting? A. I have.

Q. How have you refreshed it? A. By reference to a (452) letter which I wrote on November 6th, 1893, dated Buenaventura.

Mr. STINE: Q. Have you the letter? A. Yes.

Mr. ROBERTSON: Q. To whom was the letter addressed? A. To my brother.

Q. Now, in view of your refreshed recollection, please state the number of men, about, employed on the the line of construction in October and November, 1893. A. In reading that sentence in the letter I find that I overestimated the number of men employed at that period, because in the letter I say that we were not doing any new work.

Q. Then what do you say about the number of men employed on construction in October and November, 1893? A. I now state that the number must have been less than I stated it to have been.

Q. Have you in your testimony so far stated the date when the construction was completed to Caballete? A. Approximately I know about the date; I could not state exactly.

Q. Please state as near as you can. A. Some time in the summer of '91—July, August or September.

Mr. STINE: If he has that letter, will you allow him to produce it? I should like to read the sentence referred to.

Mr. ROBERTSON: Please let Mr. Stine see the date of the letter, the address of the letter, and that sentence of the letter.

Mr. STINE: That will be sufficient.

Letter then produced by Mr. Carter.

Mr. STINE: I would like these three lines in evidence. (453) At the request of Mr. Stine, Mr. Carter then quoted that part of the letter whereby his memory had been refreshed, which are as follows: "At present we are doing no new work; simply operating and maintaining 23 miles built from Buenaventura to San Josie, the present terminus." Date November 6th, 1893.

Mr. CISNEROS: Q. I understood you to say that San Jose was opened for public traffic on the 1st September, 1893? A. You understood me correctly.

Mr. ROBERTSON: Q. Have you computed the number of cubic yards of material removed which were upon the portion of the road which came to the company in an incompleted condition, and also on the portion which was partly completed by the company beyond San Jose? A. I have approximately.

Q. Please state them separately and then in the aggregate? A. On the first part, delivered to the Company in an incompleted condition, I calculate that there were, approximately, 7,000 cubic yards. I mean from K. 27.100 to K. 29.750, say about 6,400 cubic yards. On the latter section on those 5 kilometers, partially graded beyond San Jose, from K. 36.740 up to the neighborhood of K. 42, the amount removed was about 30,000 cubic yards; on referring to my estimate, I find that it is 28.920 cubic yards.

Q. Now, please state the two amounts? A. About 35,320 in total.

Q. Now, have you also computed the number of cubic yards in the section beginning with K. 29.750 and ending at San Jose or K. 36.740? A. I have approximately.

Q. Please state it? A. 73.600.

Q. Now, have you computed the number of cubic yards between section K. 27.100 and K. 42—I mean to the (454) terminus of the road in its completed and partly completed length? A. I have.

Q. Please state that in toto? A. 108,920 cubic yards.

CHAIRMAN: Q. Is that all earth or rock? A. I have classified it to the best of my judgment.

Mr. ROBERTSON: Q. Now, please state as nearly as you can the classes of materials composing this grand total, stating as nearly as you can the quantities of the various classes? A. The classification has been made for each section; all that remains to be done is to add them up.

CHAIRMAN: Do you propose to put in the paper?

Mr. ROBERTSON: Or put it at the disposal of our learned friend. When we put in our final defense we will include it. The figures have not yet been properly revised.

A. 40,500 cubic yards conglomerate; 27,600 cubic yards loose rock; 40,820 cubic yards earth.

Q. Only three classifications? A. Yes.

CHAIRMAN: Q. Can you give us the average prices fixed in your estimate? A. I can; conglomerate, $2.20; loose rock, 80c.; clay and earth, 40c—all Colombian currency.

Mr. ROBERTSON: Q. Have you refreshed your memory with the respect to the time occupied by the company

in removing the last 6,000 cubic yards which you knew about? A. I have refreshed my memory with regard to the time required to remove a certain quantity of material. (455) I will not say with regard to the last 6,000 cubic yards removed by the company.

Q. What 6,000 cubic yards have you refreshed your memory on? A. With regard to the quantity of earthwork between a point called Coloradas, between K. 35 and K. 36, and San Jose.

Q. What time was required by the Company to complete the work between Coloradas and San Jose, and also with regard to the amount of work to be performed, how much was it between these two points? A. From March 1st, 1893, up to September, 1893, a distance of less than K. 1,500, about 6,000 cubic yards of material to be removed, 1 wooden bridge about 45 ft. long to be built, and laying the track, also station buildings at San Jose, which was work done during that interval.

CHAIRMAN: Q. Was it sidehill work? A. It was all sidehill work—no haul. I do not think more than half a dozen wheelbarrows were used while I was there, between 1st March, '93, and 1st September, '93, on that particular section. Particularly on the bank at Coloradas creek.

Mr. CISNEROS: Q. How far is Coloradas from San Jose? A. About 1,400 meters.

Q. What was the first place the Company reached after leaving Cabellete? A. There were no places between Cabellete and Sucre.

Q. I mean, what was the name? A. There was a ravine or small creek called Piedras Piedras.

Q. What was the distance from Cabalette? A. Rather more than a kilometer.

Q. When did they leave there? A. I do not know.

Q. What was the next place after Piedras Piedras? A. Next place after that was called Bodegas

(456) Q. What was the distance from Piedras Piedras to Bodegas? A. I could not say exactly, because there is a bluff about 1,000 ft. long, and it is all called Bodegas; it is about 2 kilometers from Cabalette.

Q. Then, when did the track reach Sucre? A. I could not say exactly; about July or August, or possibly in June, 1892.

Q. And on which Kilometer is Sucre? A. Sucre is about K. 34.500.

Q. And then, Sucre is from Cabalette? A. About 4 kilometers, less than 4½ k.

Mr. ROBERTSON: Q. Have you any knowledge as to

the cost of repairs, maintenance and operation of the road? A. I have estimated the cost.

Q. Please give the Commission your estimates on those points. With as full detail as possible? A. I have a paper showing my estimates of administration expenses at Buenaventura, shop expenses, cost of ties and timber, and all other expenses of administration at Buenventura for six years; also on the same sheet is shown my estimate of the receipts of the road during that period.

Q. Do you include rails, spikes, etc.? A. That is included. I find that I have 330¾ tons of 40 lb. rails, steel. Salaries and office expenses at Buenaventura for those 6 years, $44,646; wages paid laborers on track and bridge repairs, $71,573; train expenses, $31,691; shop expenses, $23,668; renewing ties, $18,198; timber, for bridge repairs, $14,618 (the labor for same is included in the estimate for track and bridges); total expenses for six years, $204,392-16. Then I find that I have estimated the gross receipts from the traffic at $234,162 for six years. In that estimate is included the receipts for November and December, 1890, which I was informed by Mr. Cisneros were received by the Cauca Co. Half of the cost of salaries and administration expenses have been charged for the years '91, '92 and '93 to construction, being $11,015, and half the shop (457) expenses for the same period, which is $7,706. Hence, $18,721 office and shop expenses have been deducted from the $204,392.16, leaving $185,671.16, which represent the expenses of operation. I have estimated the repairs of track from K. 20.240 to K. 27.100, the first work done by the Company that has been estimated in a separate exhibit, being $6,860 for clearing at $250 per Kil. (c. c.) $1,715; removal of earthwork on land-slides, 1,200 c. y. @ $1, $1,200; trestle bridges, 973 l. f. @ $15, $14,595, and further items; the total making in gold $19,367 @ 100%. The amounts just mentioned being paper? Repairs of San Cipriano and Sucre bridges, $5,000; 330¾ tons rails, 40 lb., @ $37.10 per ton, $12,241.07; 79.63 tons 52 lb. rails @ $32.50, $2,588.31. Adding then the repairs of track, wooden bridges and the value of the rails, we have $39,196.38 to be added to the $185,671.17, and as the receipts have been calculated at $234,162.07, we find that the balance is $9,294.53 profit on operation.

The CHAIRMAN: Q. Mr. Carter, will you give us the basis of your calculation as briefly as possible? A. I estimated the gross annual revenue of the Cauca Co. from January 1st, 1891, to January 1st, 1897, assuming that 4,732 tons of freight passed over the road annually, which is based upon the official report from Bogota from the

managing director of the mule road from San Jose to Cordova and to the interior, which puts the total number of packages in the six years at 405,600. The average weight of a package is 150 lbs., two being a mule load, I have taken the average weight at 140 lbs. per package, not 150; well, assuming that the traffic was distributed evenly over a period of six years, I find that 4,732 tons were transported each year. And from averaging the tariff rates at so much per 100 lbs., taking into consideration that the freight rates were changed, I find that in the year 1891, at $10 C. C., are $47,320; 1,320 first-class passengers at 1.50, $1,980 C. C. This number I have estimated from my ob-
(458) servation there, it makes 110 passengers per month. I assume three times as many second-class passengers as first, and from what I saw there that is about the proportion. Hence I find for the year 1891, 3,960 passengers, $3,960; 720 head of cattle at $4, $2,880; 1,320 1st-class passengers at $1.50, $1,980; 4,732 tons of freight at $10, $4,732, and freight for November and December, 1890, $2,256; total, $58,396 C. C. for 1891. For 1892 I find that the tariff is somewhat changed.

Q. Please state how much had been the change? A. I have what purports to be a copy of the tariff forwarded by the Prefect of the Province of Buenaventura to the Governor of the Department, in which he incloses this order: "From the 4th July, '92, the Cauca Co. will charge as follows: Between Buenaventura to the crossing of the river Dagua up to the Tren de Sucre Nuevo or any intermediary point of the line, including Cordova, per cargo of 150 lbs., 75c.; explosives and fragile packages, $1.50 per 100 lbs.; cattle, $6 per head; hogs and sheep, $3; birds, 15c. each; passengers, first, $2.25; second, $1.50; children under 6 or 7, 75c." The above is a copy of a telegram sent to the Minister of Finances from the Prefect of the Province at Buenaventura.

Mr. STINE: Q. How do you know that? A. I have seen in the office of Mr. Cisneros, here in New York, a copy of the telegram.

Q. Did you ever see the original?

Mr. CISNEROS: He has seen the official copy sent to me.

A. It came through an official channel, I think; I am not positive of that.

Mr. STINE: I do not doubt that it was sent as stated; I only wanted to know how he knew.

(459) CHAIRMAN: Q. Can you give the Commission any information as to the quantities of animals carried? A. This is my estimate, of course, of the number of cattle that

passed over the road during my residence there; it is not in the official paper.

Mr. SCHRAMME: I understood that the witness was estimating from the report of the mule road.

A. In order that I may be clearly understood in this, I will say that I have estimated the number of tons of freight that passed over the road from the official report of 405,600 packages, so that part of my estimate has an official basis; the estimate as to the number of passengers and cattle that passed over the road is merely the result of my own observation. I have estimated that 720 head of cattle passed over the road in 1891 at $4. They were generally sent down twice a month, and came in carloads of 15. That made $2,880 for 1891. In the year 1892, taking the average rate for the year, because the rate was changed in July, we have freight, 4,732 tons, at $12.50, $59,150; 1,320 1st-class passengers @ $1.87½, $2,475; 3,960 2nd-class passengers @ $1.25, $4,950; 720 head of cattle @ $5, $3,600; for the year, $70,175. All these figures that I have given for receipts of the road are Colombian currency.

Q. Allow me to ask, is there any other class of live stock carried over the road except cattle. A. Yes, there is; but I have omitted that in this estimate. My estimate for the year 1893 is 4,732 tons freight, at $16.66⅔, $78,866.66; 1,320 1st class passengers @ $2.25, $2,970; 3,960 second-class patsengers @ $1.53½, $6,072; 720 head cattle @ $6, $4,320; total for 1893, $92,228.66 C. C. Now, for 1894, 1895 and 1896 I have freight, 4,732 tons @ $20, $94,640; 1,320 first @ $2.25, $2,970; $3,960 2nd @ $1.60, $6,336; 720 head cattle @ $6,$4,320, making for each of the three years $108,266, C. c.; grand total C. C., $545,597.66, which, at the average rate of exchange of 133%, $234,162.07, gold.

(460) Mr. STINE: I should like a full copy.

Mr. CISNEROS: We will send you one.

Mr. STINE: You will see later that our receipts are greatly in excess of what the witness says. That shows how accurate the estimatet are.

Mr. CISNEROS: That shows how moderate we are.

Mr. ROBERTSON: Q. In which year did the receipts begin to increase as you have computed them there? A. The receipts for the year 1892 are greater than for 1891.

Q. Do you know why that is? I want to bring out whether it was due to the increase of tariff or the increase of traffic? A. To the best of my knowledge there was no practical increase of traffic.

Q. Then, do you make your increase from the increased tariff? A. Yes, wholly.

Mr. CISNEROS: Have any information upon which you base your statement that there was no increase of traffic? A. No; my knowledge is as I have stated it here.

Mr. ROBERTSON: Q. Have you any information as to what the traffic between Cali and Buenaventura was before the railway was built there? A. I have not.

Mr. CISNEROS: Q. Do you know of any one there who kept a record of the traffic. A. I do.

(461) Mr. ROBERTSON: Q. Please state who? A. The Custom House officials took note of all the traffic to and from Buenaventura.

Q. Any other? A. No. There is an official record showing how many packages pass over the end of the railroad to the interior, because toll is collected on them.

Q. You say that there used to be a toll collected on freight passing from the mule road to the railway, and *vice versa?* A. Used to be, and is at present.

Q. And from Cordova back to the Cauca? A. Between Cordova and San Jose no freight passes at present over the mule road; that part has been abandoned since the station was moved to San Jose.

Q. Is there any toll road between San Jose and Cali? A. There is.

Q. Do you know whether toll is collected on all freight and animals transported or conveyed over that road? A. There was; I had to pay.

Q. Do you know whether or not an official record is kept of that traffic? A. I could not say that I know it. I have heard it; it is kept up by the Department.

Q. How many toll gates on that road? A. I do not recollect.

Q. Can you state how many locomotive engineers and general trainmen were employed on the road? A. Approximately, I can.

Q. Please do so.

Mr. STINE: Q. Before you look at that paper. Where did you get your information from, as to number of locomotive engineers and so forth? A. My observation.

Q. Why did you refer to that paper then? A. I can (462) remember without it if necessary.

At the time I reached Buenaventura there was one locomotive engineer, Caicedo by name; he had 2 firemen and on the train there were about 8 brakemen. The train was passenger and freight mixed. Six or 8 men loaded and unloaded the trains. There were 2 more laborers employed at the station at San Jose handling the freight. For a portion of the time there was a conductor of the name of Sarria; later a man by the name of Melendez; then there was

a freight agent at San Jose; he had an assistant paid by himself, because the Company paid the agent called Jimenez In Buenaventura there was freight clerk. There was also another locomotive engineer who occasionally took the train out. That is about all that I can recollect.

Q. Were there no station men employed between Buenaventura and San Jose? A. None.

Q. I mean when the traffic was removed to San Jose? A. That is so, none.

Q. How many passenger cars did they run on a train? A. Two.

Q. First and second? A. Yes.

Q. How many freight cars? A. During the last two years about two freight cars The regular trains constituted of first and second and two box cars.

Q. Do you remember the accommodations of the cars? A. I do.

Q. What were they? A They were of the same capacity—about 30 persons.

Q. What was the capacity of the cars for freight? A. 8 or 10 tons.

Q. About how frequently did they run the regular mixed trains? A. About three times a week.

(463) Q. From extreme to extreme of the road? A. Yes.

Q. And about how frequently were extra freight trains made up to send over the road? A. During the last 3 years after the construction reached San Jose and only two box cars were attached to the regular trains, extra freight trains were sent out almost as often as regular trains. While the train only went to Cordova, my recollection is that there were sometimes 3 or 4 box cars hauled, but after removing to San Jose only two, hence the extras.

CHAIRMAN: Q. Did you make the round trip in one day? A. Yes; in 2½ hours.

Mr. ROBERTSON: Q. You mean to say that before the traffic was carried beyond Cordova they put on more cars than afterwards, and that afterwards they put on the extra trains? A. Yes.

Q. Do you know why they made the change? A. It was found that the engines could not haul more than 2 box cars and two passenger cars with convenience.

Mr. CISNEROS: Q. Were the grades heavier from Cordova to San Sose than from Cordova to Buenaventura? A. They were; that is why they reduced the number of cars.

Q. What about the curves beyond Cordova? A. In what respect?

Q. Are they sharper? A. They are sharper than between Cordova and Buenaventura.

Q. Do you remember the least radius? A. When the line was located I located a radius of 60 or 62 meters, less than 200 ft. I will classify that by saying that the road was not built as located.

(464) Mr. ROBERTSON: Q. Do you know what the average grade was from Buenaventura to Cordova, and then from Cordova to San Jose?

CHAIRMAN: Averages do not amount to much on gradients; it is the maximum that controls the traffic.

Mr. CISNEROS: Q. Did I hear you say that the line was not built in accordance with your location? A. I said so.

Q. How is that? A. I mean by that that the line as it appears on the map is not the road as it was built.

Q. Why was that? A. The line was changed during construction.

Q. Was it to improve the line? A. Not in my judgment.

Q. Was it to diminish the work? A. The location was changed, I believe, to diminish work.

Mr. ROBERTSON: Q. Did that change result in the lengthening of the road? A. Yes. More curvature.

Q. Can you state the maximum grade between Buenaventura and Cordova? A. As far as I have knowledge, it was 3%.

Q. And between Cordova and San Jose? A. The maximum is over 4%.

Q. Returning again to freight, what was the character of the freight sent in box cars? A. The export generally consisted of coffee and hides and the imports of merchandise, various articles, very little machinery.

Q. Did these freight cars run full generally? A. No.

Q. About how full did they average? A. I could not (465) say, sometimes we had more freight than we could carry and sometimes very little. It depended very much on the condition of the mule road.

Q. Now, taking regular and extra trains, how many round trips would they average per week? A. I have that in my estimate. While the station was at Cordova the regular trains made three trips a week, and in a month there would probably be 14 trains.

Q. I am asking you as to the aggregate? A. Well, while the road was operated as far as Cordova there were no extras, but since September, '93, the regular trains and extra trains would be about 30 trains per month, 25 or 30.

Q. Does the increased number of trains represent an

increased freight or simply a division of the former long trains into separate ones? A. It represents a division of the trains, the freight did not increase materially.

Q. You have referred in an answer to a question by the Chairman to hogs and birds; did they constitute any substantial part of the traffic of the road? A. They did not.

Mr. CISNEROS: Q. Do I understand that by division of trains 30 trains are required now monthly, while at Cordova station only three a week were required. This, of course, increased the expenditure? A. It did.

Q. Then you mean that the new line is more expensive to operate than the old line?

The CHAIRMAN: More than in proportion to its length? A. Yes.

Q. Can you state the increased proportion? A. No, I cannot.

Mr. ROBERTSON: We find that we have reached a point whed we can close our examination of Mr. Carter and, there-
(466) fore, we will now stop, reserving the right to recall him as circumstances may require.

After discussion as to the adjournment, the Chairman announced that the meeting would adjourn until the 9th day of August, at 11 A. M., to give the Government further opportunity to examine the books of the Company in detail, and it being 1:10 P. M., the meeting adjourned.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Sixteenth Session.

(467) Held at 30 Broad Street, New York City, on Monday, August 9, 1897.

Re-examination of Mr. Carter—Cross examination of Mr. Carter by the Company.

Present—Commissioners, attorneys, and counsel as before.

The chairman called the meeting to order at 11:12 a. m., stating that the Commission would proceed to take the testimony on the part of the Government, there being no minutes ready for signature.

Mr. Robertson said that he had a few more questions to put to Mr. Carter, and the chairman called Mr. Carter to the witness stand.

Q. Mr. Carter, I wish you would refer to the maps that you have, and state at what points, going east from Cordova, the line was changed; namely, the line as actually built differs from the line on the maps.

The maps were then produced.

A. The map marked "Defendant's Exhibit 2, June 19th," shows the located line from Cordova through to Sucre; the part now referred to is from Caballete, about K. 30 to Sucse. The location represented on this map does not now represent the line as actually constructed, because in the construction the location was departed from, so that the profile would also be different.

Q. Please state a point, going east, where any actual change was made from the line as located on this map? A. (468) At the point marked "Quebrada Caballete" about K. 30. Construction was begun there in July, 1891, and while the construction was going on the location was revised and changed somewhat. This is not the only point; there are various other places where the location was revised to Sucre.

Q. There is nothing on that map which you have that would show where the line has been changed, or where construction was actually done? A. There is not. Nothing.

The CHAIRMAN: Was the effect of this change to decrease or increase the length, materially, of the line. A. It did not change the line materially.

Mr. ROBERTSON: Can you indicate from point to point the departure made from the line as originally located. A. I will state from K. 30 up to Piedras Piedras, which is K. 31, there were changes.

Q. How was the daparture made in that section? A. The departure was made by throwing the line to the north, towards the river; the distance would be very little, because the points where the change was made were the highest and steepest.

Q. What was the effect as to increasing or decreasing the amount of work to be done? A. That decreased the amount of work to be done.

Q. Can you estimate the percentage of decrease—about? A. I could not—I paid no attention to that.

Q. Have you any recollection of the construction which would enable you to say that there was a decrease of about any given percentage? A. The decrease was very little at this particular point—from K. 30 to K. 31.

Q. Do you refer to the decrease in distance or the amount of work to be done? A. I mean the decrease of work to be done.

Q. Could you not estimate what the maximum percent-
(469) age might be? A. I could not; I do not recollect that; I could simply state in a general way that the work on the line as constructed was less.

Q. Now, take the line from K. 31 to the next point where new line and the original came together, or nearly so? A. The departure from the original location was very slight; in some cases would not amount to more than 2 feet, generally to the left; in other places the line would vary about twenty or thirty feet from the location. The point K. 32, and ahead, say, for a distance of about 200 meters, I said was changed; this was a steep hill and could not be changed much—perhaps a foot in some places.

The CHAIRMAN: Q. Was it rock? A. Yes, Bodegas was all rock; at this point, about K. 32.500, the line was compounded. This exhibit shows we have compounded the curvature at 32.400, and on the original location it is a single curve. My recollection is that there was only one curve; the change was very slight. By compounding the curvature some work was avoided. The same way through up to Sucre, about K. 32.500 up to K. 33, no change was made. From K. 33 to Sucre there were changes made—all slight.

Q. How about from Sucre to San Jose? A. It was changed also.

Q. Did these changes operate to increase the distance? A. Slightly.

Q. Taking the increase of distance and the decrease of work done, did the result of the change add to the cost of construction or decrease it? A. It decreased it slightly.

Q. Can you figure out from any data that you have the extent of the change in the way of decreasing the ex-
penses of construction? A. I cannot; I can simply tell
(470) you in general terms about the location as revised, and that the effect of that was to reduce the cost.

Q. Were those changes made by means of surveys, or in what way was it made? A. In some places it was surveyed, and in others simply changed by the foreman of construction, without any new surveys.

Q. Do you know whether any officers of the Company took part in making these changes, by examination and by survey? A. These surveys were, to my knowledge, approved by the Company.

Q. Who approved them? A. The Manager of the Company.

Q. Who was he? A. Mr. Cherry.

Mr. STINE: Q. When was this approval? A. In July, 1891.

Mr. ROBERTSON: Q. Was he on the ground at the time? A. He was personally present when the changes were made from K. 30 to 31. He was not present during the whole of the time—during some part of it.

Q. Do you know whether any maps were sent to the Government upon which these changes were marked? A. I do not.

Q. Did you ever hear of any maps being sent to the Government showing the changes? A. Never heard of any other maps being sent to the Government.

Q. Can you state how far the construction work of this road had proceeded at the time the Company had completed sufficient kilometers at the rate of $38,000 per kilometer to represent $200,000?

This question was objected to by Mr. Stine, who said (471) that it had not been shown by the witness that he had any knowledge of $200,000, or any other sum, having been paid.

Mr. ROBERTSON: Your witnesses have testified to at least this amount of expenditure; we propose to find out how; it is in evidence here that more than $200,000 has been expended, and I am asking the witness if he knows how far the construction had progressed when this amount had been expended.

THE CHAIRMAN: The chair thinks the question is rather vague, and is difficult to answer in its present form. I do not think I know the period you refer to myself.

Mr. ROBERTSON: I think the question is perfectly clear; I will ask the Secretary to read it.

(Question repeated.)

Mr. STINE: We have shown that we have spent over $900,000; the testimony so far is that between $600,000 and $700,000 has been spent on construction. This witness has gone into and prepared estimates, or he claims to have prepared estimates, and he puts the amount expended for construction much lower than claimed by us, and now he is asked to pass upon the point as to when this Company had expended $200,000 in construction, when there is a difference between the two contending parties of several hundred thousand dollars. Now, do you mean expended $200,000 as by the witness' estimates, or do you mean by our figures?

Mr. ROBERTSON: Neither; I respectfully submit that perhaps the chair does not see the question as it should be seen. I am asking the witness whether he knows. If he says yes, the construction had proceeded up to K. so and so, it will be valuable information. My friend desires to confine me to a situation which he has built up himself.

(472) THE CHAIRMAN: The opinion of the chair is, while the question calls for a specific answer it does not appear that the witness could judge how much had been spent at a certain period of the work.

Mr. ROBERTSON: You will understand that we are here forced into a difficult position; that we have nothing exact as to the amount actually spent on construction, as the books show nothing of that kind, and even the expert has been unable to find anything as to the amount spent on construction. The expert has stated that he can find nothing in the books by which he could state what the cost of construction was at any point.

This was contradicted by Mr. Stine.

Mr. ROBERTSON (continuing, said): That is the substance of his report. I may not be quoting his exact words, but that is the substance of the report—he is unable to testify from the books what was spent on construction. That being the case, we wish to ascertain to what point the construction and expenditure of $200,000 had proceeded when $200,000 had been expended thereon by asking the witness—he has gone over the ground and is familiar with it—what his estimate is, and ascertaining what his expert opinion is. It is only fair to say that our friends on the other side, in their opening, and they have attempted to follow it up by Mr. Blum's evidence, claimed that we deferred the payment of $50,000, the return of deposit, something like eleven months; now, we propose to show that the company had not so far proceeded with the construction that the $200,000 had been expended at the time the Company claimed it was so expended.

Mr. STINE: The Government acknowledged that it owed the money eleven months before they paid it. The presumption is that, if the Government did this, they knew (473) exactly what had been done, and it is not necessary for the present witness, after seven or eight years, to testify on this point; it is an absurdity.

Mr. CISNEROS: The Government said in the agreement of March 9th: "If the Minister of Public Works finds out that the Cauca Co. has done work for the amount of $200,000, the Minister of the Treasury will pay the money."

Mr. STINE: They paid it, did they not?

Mr. CISNEROS: Exactly.

Mr. STINE: Have they ever since then claimed that the work was not done in an official document?

Mr. CISNEROS: They certainly have claimed and stated that the work was not done.

Mr. STINE: I mean in any official document?

Mr. CISNEROS: I do not know that.

Mr. ROBERTSON: I submit, if the Chairman please, that the mere fact that our Government paid in advance is no evidence that it deemed that it was bound to pay. It gave the Company two years' extension of time for nothing, which shows its generosity toward the company, which was then in default. We are charged with deferring the payment of the $50,000 for eleven months. This sum was to be paid when a certain sum of money had been expended on constructing the road. We propose to show now, in point of fact, that $200,000 had not been expended on construction, even at the time when the money was paid by the Government, so that the Company has in no way been prejudiced by this.

Mr. SCHRAMME: Although the payment was made in 1892, the Libranzas were not fully redeemed until the end of 1894.

Mr. ROBERTSON (repeating the question): Can you state how far the construction work of this road had proceeded at the time the Company had completed sufficient kilometers, at the rate of $38,000 per kilometer, to repre-
(474) sent $200,000?

The question was objected to by Mr. Stine, and the objection overruled by the chair.

Q. Question repeated. A. I can state the distance approximately.

Q. State it as best you can? A. The point lies somewhere between Bodegas and Sucre; about one kilometer west of Sucre—perhaps three-quarters of a kilometer.

Q. Can you tell when the work was completed to this point which you last mentioned? A. Probably I cannot.

Q. State to the best of your recollection. A. I will state why I cannot tell—because I was absent from Colombia at the time. I was in the United States at the time the construction got up to that point. I was absent from the 1st of March to the 12th of May, 1892.

Q. Was it completed between those dates? A. It was, yes.

Q. How far had the road been completed when you left in March, '92? A. The track had not reached Bode-

gas; it was between K. 32 and Bodegas. That was the end of the track when I left in March, 92.

Q. What part of $200,000 would that completed part represent at the rate of $38,000 per kilometer; that is, that which was completed up to the first of March, 1892? A. I do not know.

Q. Can you figure it out? A. It would be a long process; it would require data which I have not at hand.

Q. Do you remember the day in May on which you returned? A. Very approximately.

Q. State it. A. It was between the 10th and the 15th of May.

Q. To what kilometer had the completed work been carried when you returned? A. At that time K. 34, about. (475) Q. Did you ever have any conversation with Mr. Cherry, when he was in the management of the road with respect to the future value of the concession, under which the road was to be built?

Objected to by Mr. Stine.

Mr. ROBERTSON: On what grounds?

Mr. STINE: On the grounds that Mr. Cherry is dead, and not here to contradict this witness, and on the further ground that according to the laws of this State a man is not allowed to testify as to transactions between the party in interest and—

Mr. ROBERTSON: I think you had better withdraw that argument, Mr. Stine.

Mr. STINE: I will not withdraw it; I do not mean to say that the code applies to this particular transaction. I am applying it on the general ground that this witness can say that Mr. Cherry told him anything under the sun, and it would be utterly impossible for us to contradict him.

Mr. ROBERTSON: That would be your misfortune; our witness is alive; the witness you might have called is, unfortunately, dead; that cannot prevent us from proving our case with our witness. It is not to be presumed that if Mr. Cherry were here he would deny the conversation.

Mr. STINE: Well, go ahead, then; I will withdraw my objection.

Question repeated, as follows: Did you ever have any conversation with Mr. Cherry, when he was in the management of the railway with respect to the future value of the concession under which the road was to be built? A. We often discussed that question, and others of a similar nature.

Q. Did he ever express to you his views with respect

(476) to the value of the concession? A. Directly, he did not.

Q. What do you mean by directly? A. Well, he did not say to me that the concession was absolutely worthless, or that it was worth any particular sum; the result of our conversations was about this: that the security, which was one-half the revenues of the Pacific custom houses, namely, Buenaventura and Tumaco, was not sufficient guarantee for the payment of the interest on the road if the Company had gone ahead and built, say, 150 kilometers in the first year; 50% of the custom houses would not be enough interest on the guarantee, at $38,000, provided the road did not earn anything.

Q. Do you know whether that was a desirable state of affairs for Mr. Cherry? A. I did not consider it so.

Mr. STINE: We are willing to concede that Mr. Cherry did say that, because that is a fact.

A. Was that the only security, as you remember it? A. No, there was some other security; there was as security any unappropriated funds in the national treasury.

Q. Did Mr. Cherry say anything about the probability of getting any unappropriated funds? A. I do not recollect that he did.

Q. He never said that he expected to get any of these funds? A. He never told me that he did.

Q. And in speaking of the security for the construction of the road, did he refer to anything else as such security other than the one-half of the receipts of the custom houses of these two ports? A. Nothing else.

Q. What were the traffic conditions with respect to affording a sufficiency of funds to not only carry on the operation of the road, but assist materially in the construction thereof? A. There was an insufficiency.

(477) Mr. STINE: May I ask whether the witness is testifying now as an expert financier?

Mr. ROBERTSON: By no means.

Mr. STINE: But he is; he is testifying as to the sufficiency of the guarantee to pay interest on 150 miles of road; is that an engineer's knowledge?

Mr. ROBERTSON: He is speaking of his knowledge of the facts relating to the concession.

Some discussion then ensued, Mr. Robertson disclaiming that the witness' evidence is that of a financier.

Mr. Stine asked that the previous question leading up to the latter question be re-read, which was done.

The objection being overruled, the question was repeated.

A. My answer is that they were insufficient; that is my conclusion and opinion; that is all.

Q. I think you have testified that the road was carried as far as San Jose in about September, 1893? A. That is quite right.

Q. Have you testified how much beyond San Jose the road was carried after September, '93? A. I have.

Q. Have you testified as to the amount of construction work in material moved was done beyond San Jose? A. Yes.

Q. Please repeat it, if you will? A. About 30,000 cubic yards.

Mr. ROBERTSON: That is all; he is your witness, Mr. Stine.

CROSS EXAMINATION TAKEN UP BY MR. STINE FOR THE CAUCA COMPANY.

Mr. STINE: Before taking up the cross examination, I desire to say that I sent a telegram to the Secretary of the (478) Commission, saying that I had not received the estimates upon which Mr. Carter testified at our last meeting. You will recollect at the last meeting they were placed at our disposal, and I have been requiring them this week, in order to prepare my cross examination of this witness. In answer to that telegram I received the following letter from Mr. Miller:

New York, August 6th.

Marcus Stine, Esq.,
City:

Dear Sir,—I am in receipt of your telegram of to-day, which I communicated to Mr. Cisneros. He informs me that the estimates are not yet in evidence, but, as soon as they are, he will take pleasure in sending you a copy.

Yours truly,

(Signed.) HAROLD R. MILLER,
Secretary.

Now, there is no question that the estimates were in evidence. The witness has testified on them, and I think they should be presented to us.

Mr. Cisneros stated that, as Mr. Robertson had been out of town, he did not wish to send any papers out until they had been revised by him.

Mr. Robertson stated that Mr. Cisneros had been called out of town owing to family illness, and they had a mis-

connection. There had been no intention to circumvent the other side by keeping out the estimates.

Mr. Cisneros said they would be sent the day after to-morrow. This explanation was accepted as satisfactory by Mr. Stine.

Q. Mr. Carter, you have testified that you went to Buenaventura the first time in January, 1891, did you not? A. That is right.

Q. And you went down with whom? A. With Mr. (479) Baker from Panama.

Q. Who was in charge of the work when you went down with Mr. Baker? Was Mr. Cherry there? A. Mr. Cherry was there.

Q. And Mr. Cherry had been there for some time before you got there? A. He had.

Q. Do you know how early he got there? A. Positively I do not.

Q. Say about when? A. He went down on the steamer before the one I traveled on, about 15 days before.

Q. Less than a month before? A. Yes.

Q. Do you know what had been done at the time in clearing off the six kilometers which were incompleted, which Mr. Cisneros had built? A. Very little had been done.

Q. I do not ask you whether little or much; I want to know how much? A. Some had been done.

Q. Do you know how long they had been working on these six kilometers when you got there, at anything, clearing or other work? A. I do not.

Q. Do you know whether, as a matter of fact, they were still working on these six kilometers as much as seven or eight months after you got there? A. Probably they did.

Q. Was it 10 months? A. I don't know.

Q. Was it 12 months? A. I don,t know.

Q. Was it 18 months? A. I don't know.

Q. Was it 24 months. I am speaking of these particular six kilometers? A. I don't know.

Q. Was it two years? A. I do not know, I can't say.

(480) Q. Was it four years? A. I can't say.

Q. Was it five years? A. I don't know.

Q. Was it 6 years? A. I could not testify on that point, because I did not stay as long as that.

Q. Do you remember the men who were employed on these six kilometers at any one time? A. No; I do not.

Q. In making up your estimates from month to month, as to the men employed, did you take into consideration

the men employed on these six kilometers? A. Of course.

Q. How many men were employed, on the average on these six kilometers during the six years that you have testified that you did not know they were at work? A. I testified I did not know how many men were working on the repairing of those 6 kilometers.

Q. Did you not testify that ¾ of the work had been removed when you got there? A. I did not testify that.

Q. What did you testify? A. I testified that ¾ of the earthwork, from 27.100 to 29.750, on the K. 2.650 had been done.

Q. You are speaking of the six kilometers Mr. Cisneros had built? A. That is not quite correct.

Q. Did these six kilometers end at K. 27.100? A. More than 6 kilometers; I said ¾ of the earthwork on a certain section of the work had been performed prior to my reaching Colombia. I did not refer to the first 6 or 7 kilometers from Cordova; that is, I do not refer to the line between Cordova and the end of the track.

Q. What did you refer to? A. I refer to the K. 2.650 beyond the end of the track.

Q. Beyond the 6 kilometers? A. Beyond 27.100.

(481) Q. How much of this ¾ was completed on the 6 kilometers? A. All completed with the exception of the San Cipriano bridge.

Q. Do you know whether or not these 6 kilometers were allowed to remain in the same condition in which they were turned over to the Government by the Cauca Company? A. They were not allowed to remain in the same condition.

Q. What was done? A. These kilometers were repaired, and the San Cipriano bridge was built.

Q. What did the repairs consist of? A. Removing cross-ties that were worn out and rebuilding the bridge.

Q. No new rails? A. I had no knowledge of any new rails.

Q. Will you swear there were none put down? A. I will not swear.

Q. Was the grade changed on these 6 kilometers? A. Never was.

Q. Was the cut at Santa Rosa reduced? A. It was.

Q. Was that a piece of heavy work? A. Originally it was a piece of heavy work.

Q. Was much of this done when the Company took the road? A. Very little remained to be done when the Company took it.

Q. Did you have charge of the gang that did the work? A. I did not.

Q. Was it a man named Pace? A. His name was not Pace.

Q. You say Pace did not have charge of that? A. He did not.

Q. Was that cut widened? A. It was not.

Q. Was there a gang of men at work there for a long (482) time? A. I do not know how long.

Q. Was it six months that gang was there? A. Less.

Q. Was it five months? A. Less.

Q Three months? A. Three months?

Q. More than two days? A. Something less than thirty days.

Q. Are you positive of that? A. No, not positive.

Q. Then, what do you mean? A. I mean to say about thirty days; I presume so, at least.

Q. Do not give us your presumption. A. I can give you nothing except presumption, because I do not know.

Q. How can you say it was not more than thirty days, then? A. Because I concluded from the amount of work to be done there it would not have taken more than thirty days.

Q. I am not asking you that; you say you gauge the number of men from the amount of work to be done; how much ought the men to have done? A. It depends upon the quantity of men.

Q. Suppose you put on a number of men; what would have been the number? A. I would have put a large number of men there.

Q. How many? A. I would put about 50 men.

Q. These fifty could do the work in how long? A. About 15 days, I should say.

Q. Well, do you know, as a matter of fact, how long it took to do it? A. I do not.

Q. Why not? A. Because I was not there when it was done.

A. Where were you? A. I was engaged on surveys. I would say that you are talking of the Santa Rosa cut while you think you are talking of some other cut; from what you say I believe you have in your mind some other cut.

The CHAIRMAN: What was the amount, in your judgment, to be done there at Santa Rosa? A. About 600 (483) yards; probably less.

Q. Heavy excavation? A. No, not heavy; it was conglomerate.

Q. Did it have to be hauled? A. It did have to be hauled.

Q. What was the length of the haul? A. Not more

than 500 feet at one end and about 800 feet at the other end.

Q. I am speaking now of the change that was made in the road left by Mr. Cisneros? A. I am speaking of the portion of the line between the end of the track and K. 30.

Q. That is part of the earthwork that you testified was completed? A. That is it.

Mr. STINE: Now, leaving that for a moment, Mr. Carter, when did you leave them employ of this Company? A. About the 1st of March, 1895.

Q. You say the 1st of March, '95; you left on good terms, I suppose? A. Very good terms.

Q. You were on good terms with all the persons in the employ of the Company? A. I was.

Q. You were on good terms with Mr. Blum? A. Yes, certainly.

Q. And with Mr. Cherry? A. Yes.

Q. At the time you left this Company you had no bad feeling towards the parties connected with it? A. None whatever.

Q. You were discharged once? A. I was.

Q. By whom? A. I think I discharged myself.

Q. You said just now that you were discharged? A. I correct that.

Q. Did you not telegraph once to New York, asking if you were obliged to obey the orders of Mr. Sidney Schramme, and leave the employ of the Company, and accept a discharge from Mr. Sidney Schramme? A. No, I did not; I do not recollect anything of the kind.

Q. What did you telegraph?

(484) Mr. ROBERTSON: If the telegram is in existence, I ask for the production thereof.

Mr. STINE: We will not produce the telegram until we are ready to do so, even if you ask for it.

After some discussion, the chairman ruled that the purport of the quesrion as to the telegram was to test the witness' memory, and would therefore be allowed.

Mr. CARTER (the witness): With the permission of the chair, I wish to say that I fully appreciate the value of an oath, and when anybody suggests that I am not telling what is to the best of my knowledge the facts of the case, they are stepping on very dangerous ground; it seems to me that it is probably an error in the way of expressing the question.

The CHAIRMAN: The chair has not presumed that there is any intention of that kind toward the witness, and

in any case the witness is under the entire protection of the chair.

Mr. STINE: I do not propose to allow the witness to make speeches or threaten me in any way. I propose to test the witness' memory, and I have the right to impugn his motives, and the right to impugn his statements, and I call on the chair to ask the witness not to offer any threats.

Mr. CARTER: I offer no threats.

Mr. STINE (continuing): I do not want speeches, nor statements regarding your knowledge of the value of the oath; you can keep them to yourself.

Mr. CARTER: I said that because in the minutes of a previous meeting it was stated that witnesses had testified falsely before. I did not take it at the time that the Commission was meant to understand that I was testifying falsely.

The CHAIRMAN: The witness must not be too sensitive on these points.

Some discussion then ensued in regard to the introduction of the telegram, and the chair ruled that the telegram (485) was not in evidence, and the question was allowed.

CROSS EXAMINATION CONTINUED BY MR. STINE.

Q. You say you discharged yourself; you mean by that that you resigned your position, do you; did you resign after being asked to resign? A. No.

Q. Did Mr. Sidney Schramme tell you that you were discharged from the employ of this Company? A. I do not know that he did.

Q. You do not recollect that Mr. Sidney Schramme said that you were discharged from this Company? A. I do not.

Q. Do you recollect that you sent a telegram to the home office about this time? A. I do.

Q. What were the words? A. The purport of the telegram was to ascertain whether or not I was superintendent of construction there, and I asked whether or not I should report to and obey Mr. Sidney Schramme in reference to construction work, because I had been appointed by Mr. Cherry, when he left, Chief Engineer and Superintendent of the Company. That appointment had not been recalled, and for that reason I considered that Mr. Schramme was rather trespassing on my duties, and I telegraphed to find out if that was so.

Q. That is all you said? A. That is the substance; I did not say as much as that.

Q. I mean that is all the substance? A. I have given you the purport of it.

Q. Give it as carefully as you can in the language that you used at the time? A. I cannot give that now.

Q. After you received an answer to that telegram, did you resign? A. My recollection is that I resigned before receiving an answer; I did not receive any answer.

Q. You say you sent the telegram and then resigned? A. Yes; it may have been that I resigned at the time I sent the telegram.

(486) Q. To whom did you send it? A. Do you mean my resignation?

Q. Yes. A. I think I may have told Mr. Sidney Schramme, or I may have written it—written to him.

Q. Do you think you did? A. I do not know whether I spoke to him or wrote to him on the subject.

Q. Well, then, you did not get an answer to that cablegram, and then you resigned? A. Quite so.

Q. Then you came north? A. Yes.

Q. You saw Mr. Cherry, and Mr. Cherry re-engaged you? A. Yes.

Q. Now, you and Mr. Cherry were very good friends, were you not? A. On very friendly terms.

Q. He relied on you a good deal, did he not? A. I don't know.

Q. Do you not think he did? A. Probably he did in regard to the work.

Q. Did you and he consult frequently in regard to the work? A. Yes.

Q. Now, you continued to be on good terms up to the time that you resigned from the Company? A. We had little spats occasionally, but that did not amount to anything.

Q. Now, with the exception of these little spats, you and he got on very well together, and he had a very friendly feeling toward you, did he not? A. He did.

Q. You never had any reason to doubt it? A. Never.

Q. You knew him very well, did you not? A. I did.

Q. Did you consider that he was a man in the habit of telling the truth? A. I did.

Q. You considered him very truthful, did you not?

The CHAIRMAN: Has this any bearing on the expenditure or construction of the work?

Mr. STINE: It has, certainly. You will see in a very short time that I am leading to a very important point.

(487) Q. You say that you considered that Mr. Cherry was as truthful as most men are? A. Yes; that is so.

Q. You consider most men to be truthful, then? A. Yes.

Q. Do you think that Mr. Cherry would tell a deliberate falsehood? A. (After hesitation.) I cannot say that I do.

Q. Why do you hesitate? A. Because Mr. Cherry had made some promises to me that he did not fulfill; but that is a different thing from telling a deliberate falsehood.

Q. You do not think he would state a deliberate falsehood in writing? A. I do not.

Q. I ask you to look at this paper and see if you know the handwriting, and tell me what it is. A. It is labeled the C. C. & I. Co., which I presume means the Colombian Construction and Improvement Company. Report of the President, December 31, 1893.

Q. Do you know anything about that report? A. No: I know nothing about it.

Q. Do you recollect that Mr. Cherry consulted you in making out this very report? A. I do not recollect his having done so.

Q. You will not swear that he did not? A. No.

Q. Just look at it and see if you recognize the handwriting. A. On the first gage I recognize it; also on the 2d and 3d. It seems to be all in Mr. Cherry's handwriting.

Q. It seems or is it? A. It is.

Q. Now, you have testified that, according to your estimate, the grading from K. 29.750 to San Jose made a total of 73,000 cubic yards? A. That is correct.

Q. Of which 30,000 were conglomerate? A. That is right; my recollection is that it was about 30,000 conglomerate.

Q. This is a report, or purports to be a report of Mr. Cherry to Dec. 1, 1893, and I am going to read you some portions of it, and will offer it in evidence later:

(488) "Buenaventura, Colombia, Dec. 1, 1893.

"To the Directors and Shareholders of the Colombian Construction and Improvement Company.

"Gentlemen,—I beg to present to your consideration the following information about the Ferro-Carril del Cauca:

"LENGTH OF ROAD.

"The completed portions of the road was measured on November 10, 1893, by the prefect of this department upon

the request from the General Government at Bogota. The total length from Buenaventura to the new terminus at Son Jose was ascertained to be K. 36.400 (see note showing total to be 36.690) exclusive of the sidings and switches, and a certificate to that effect was issued. The Company has expended in this work, approximately, in cash, as per statement of Treasurer, from September 30, 1893, the sum of $341,534.64, and receipts from traffic from Jan. 1, 1891, to Nov. 1, 1893, $174,168.70, Colombian currency, or in gold, at 100 per cent. exchange, $87,084.35; total sum expended, $428,618.99.

"DISTRIBUTION OF EXPENDITURE.

"I approximately classify the expenditure of the Company in gold, as follows, including work done at Buenaventura.

Mr. ROBERTSON: Are you going to put that paper in evidence, or do you mean that you are going to offer it in evidence?

Mr. STINE: I am going to ask some questions on it.

Mr. ROBERTSON: I think we would save time if the paper were offered and accepted in evidence, in which case the entries on the records could be dispensed with.

Mr. STINE: I shall offer it at the proper time.

Mr. ROBERTSON: Then I object to the reading of it. (489) You are now reading this document, and making it the basis of certain questions to the witness, and you have asked the stenographer not to enter the questions on the record.

Mr. STINE: That is not so. My only object was to save work for the stenographer; that is all.

Mr. ROBERTSON: If you are making this reading the basis of your questions, there is no doubt that they must certainly go in the record.

The CHAIRMAN: There does not appear to the chair to be any intention to keep any matter out of the record; it is simply with the idea that the paper can be put in, and the secretary can fill in the questions therefrom afterwards.

Mr. ROBERTSON: We impute no such motives as keeping anything out of the record. We want to know whether this document is read and put in as the basis of a question.

The CHAIRNAN: It is evidently put in as a question.

Q. I find that Mr. Cherry states that the total amount expended by the Company up to Sept. 1, 1893—you were still in the employ of the Company at that time, were you not? A. I was.

Q. You have testified as to expenditures at that time? A. During, and after that time.

Q. Now, he states that the expenditures—namely, the total sum expended—was $428,618.99. Do your figures and his agree on that point? A. They do not.

Q. In what respect do they differ? A. His figures exceed my estimates.

Q. To what extent? A. I do not know.

Q. Try and recollect; take these figures, and certainly you can recollect your estimates. A. (After calculation.) There is a difference of at least $150,000; he estimates more than I do.

(490) Q. As far as you know, had he access to the books of the Company, did he not? A. I suppose so.

Q. You know that he did? A. I should say that he did, as manager of the road.

Q. Who had charge of these books? A. Mr. Blum.

Q. You know him well? A. I do.

Q. You know he is a truthful man? A. I do.

Q. You think if he made an entry in the books it would be a truthful entry? A. I do; I believe that Mr. Blum would tell the truth.

Q. Then you believe that both both Mr. Cherry and Mr. Blum believed their figures to be correct? A. I have no doubt.

Q. How do you explain the discrepancy between your figures and Mr. Cherry's? A. Probably he may have taken into his estimate certain sources of expenditure that I did not consider in making up my estimate.

Q. That is a good explanation; I will not say he may not have done so. I call your attention to the date in asking you as to your estimates. It is after September 30, 1893? A. Quite so; is that date at Buenaventura?

Q. It is dated Dec. 1, 1893, but the estimates are only brought down to Sept. 30, 1893. I believe that your estimates were brought down to a later date, were they not? A. Yes, they were.

Q. To what date are yours brought down? A. Mine are brought down to the end of the year 1896.

Q. So that instead of the difference between your estimate and that of Mr. Cherry, his official statement to the directors and stockholders of that Company being diminished, the difference, in your opinion, would be still more, if brought down to the same date as your figures? A. It would.

Q. Very much more? A. Yes; a greater discrepancy.

Mr. STINE: I will continue. "Distribution of expenditure. The approximate expenditure of the Company in

gold is as follows, including work done at Buenaventura: (491) Constructing 16.691 kilometers, $204,850." Do your figures and Mr. Cherry's agree on that point?

Mr. ROBERTSON: May I ask whether Mr. Cherry was not the contractor on the construction of this road at that time; it is in your evidence that he reserved that right.

Mr. STINE: He was not. I have answered your question. I am not going to argue; please allow me to examine my witness.

Q. How does that differ from your estimate up to that time? A. It differs in the item itself; I figured at less than 15½ kilometers.

Q. Do you mean to say that, when Mr. Cherry says we constructed 16.691 kilometers, that he states what is not so? A. I cannot reconcile—

Q. Please answer my question? A. You cannot make me state that Mr. Cherry declared a deliberate falsehood.

Mr. ROBERTSON: Q. Why not? A. Because I believe and have testified that he was a truthful man.

The CHAIRMAN: The witness is at liberty to qualify his answer and explain the discrepancy.

Mr. STINE: I have asked a question that calls for a categorical answer.

Mr. ROBERTSON: He has given it.

After discussion, the chairman said: The witness can answer the question, with his knowledge, in such a way as not to commit himself on way or the other; as an intelligent man, he can easily do that. Mr. Carter, you can answer the question in such a way ,as you consider that, under oath, you can render a proper answer

(492) A. In the first place, it is a matter of calculation and opinion in regard to the 16½ kilometers. I do not consider that the 16½ kilometers were constructed, whereas Mr. Cherry has put that down as new construction. I cannot reconcile that statement with the facts as I saw them in Colombia, where at least 7 kilometers of track was already constructed, and I can state further that, while there may be no intention of stating a deliberate falsehood, one may be mistaken in his estimates and calculations.

Q. Is it not quite possible that you are mistaken in your estimates? A. That is also possible.

Q. Then you really do consider that you may be mistaken yourself? A. Yes; every estimate is liable to be mistaken.

Q. Did you have any field notes with you when you made the estimates? A. I did not.

Q. How did you arrive at the estimate of its cost? A. From my general knowledge of the work; my long experience with the work as locating engineer. It was my province to calculate the amount of work done at that time. I was directly concerned in the construction of the work for two or three years. For that period I had a general knowledge of what was done by the Company in that direction.

Q. That same rule applied to your estimates of bridge construction? A. To all.

Q. You think they were just as accurate as your estimates on excavation, and for construction, and so on? A. Yes.

Q. Equally accurate? A. It may be that some estimates in regard to certain classes of work may be nearer the real cost than others.

Q. you think your estimates in reference to cost are accurate when it is a question of construction. do you not? A. Approximately so.

Q. You do think they are accurate? A. Approximately so; yes.

Q. Absolutely correct? A. No; one cannot say within narrow limits.

Q. What do you mean by narrow limits? A. I should (493) say in estimating work done a long time ago, if I get within ten or twenty per cent. in estimating the cost, that would be a good estimate.

Q. Suppose you are about 100% off? A. That would be a poor estimate.

Q. Would it not throw great discredit upon the balance of your testimony if it could be shown that in any one or two important particulars you had been as much as 100% *per cent.* out of the way in your estimates of cost? A. No, it would not, with regard to one or two items.

Q. But suppose that these items involved a large amount? A. A large amount is a very general expression; for instance, in the shipment of rails, I may be far out on that; I am sure that I am far out.

Q. Why do you testify positively, then. A. The reason why I am far out is because, since I have made up the estimate, I have seen or heard stated that a certain sum was paid for the rails to Goddard. The amount paid was a great deal less than what I allowed; but although this is so, and I may have allowed 100% too much, that ought not affect the general total of the rest of my estimate.

Q. Now, you have told about rails. Suppose that there were many other items that you have not taken

into consideration at all, or which you have estimated as having cost a certain sum, and it should so turn out that they cost a great deal more or a great deal less, would not that throw discredit on the value of your totals? A. It might affect the separate items, but it would not affect the total materially.

Q. You think the total would be right, then? A. I mean that it would not be 100% off.

We have dropped the 100%. I am speaking now generally. A. I say that in certain minor items, I might probably be 100% off; I may be very far off, because I may possibly include a great many more items, and, on the contrary, I may have over-estimated for some other (494) items; for instance, I have over-estimated very much the cost of operating expenses, and the cost of renewing ties and repairing bridges.

MR. STINE: Q. The next item I find is repairs on old line, 34 months. What did you estimate the repairs on the old line during these 34 months? A. I do not recollect.

Q. Please make an estimate. A. I estimated the the whole of the repairs on the line for the six years.

Q. What do you make it? A. I estimated wages paid for repairs to track at $71,573 gold.

Q. I do not ask you what you estimated for wages alone. See if you cannot estimate the repairs on the old line for the first 34 months; you are very good at estimating. A. O no; I am not very good.

Q. O yes; you are the best man I ever have met on estimates. A. I have not the same opinion of myself.

Q. You are too modest; see if you cannot do this estimating. A. I cannot do it without figuring.

Q. Pray tell me how you would do it? A. I would proceed by trying to remember how many men were employed on a gang, for instance, for the last three years I was there, after the road reached San Jose. We had about 70 men on the repairs of track alone. We had about five gangs of about 12 men each, and then there was a gang of about 10 men on repairs to bridges. That was the actual number of men employed there. They would never vary, because I was there at Buenaventura, and lived with Mr. Blum at the time, who paid the men, and so forth. Then I would have to take into consideration the number of cross-ties used, the bridge timbers that were placed, expenses of running trains over the road, shop expenses, and so forth; so there would be a good many items to take into consideration.

Q. The question of whether or not there was any rain would not that be considered by you? A. I considered the
(495) men worked on an average 24 days a month.

Q. And the efficiency of the work did not depend on the climatic conditions at all? A. O yes.

Q. And you allowed for that in your estimate? A. I allowed for just what they did; I know that seventy men were employed on repairing, and some days they did not work at all. I have estimated that they worked on an average 24 days in each month.

Q. Suppose you make an estimate in the rough for these 24 months? According to your way of making estimates. The Chairman would not mind waiting a few minutes. We want to get at the accuracy of the witness. I am speaking now of the old line to Sept. 30, 1893. A. Do you mean only to Cordovo?

Q. I mean up to Cordova; I mean six kilometers beyond Cordova; I judge it must be to K. 29.750.

Mr. CISNEROS: You will remember that in the evidence of Mr. Blum he stated that the traffic was in operation to Cordova until Sept. 1, 1893, when the traffic was removed from Cordova to San Jose, so that what you have there will be the operating expenses until Sept. 1, 1893, up to Cordova.

Mr. CARTER (the witness:) No, because before Sept. 1, 1893, the train was running up to Sucre, and the line had to be kept in repair. It is impossible for me to figure with any degree of approximation what that would be, because I am asked to figure on a separate part of a section, and I have figured on the whole section.

Q. Then, you cannot answer it here? A. No; I could do so at the next meeting.

Q. All right; can you give me some idea of what it cost to operate the road from Jan. 1, 1891, to Sept. 30, 1893? A. Taking the operating expenses at the end of the year 1893, without including any part of the expenses of construction, it would be about $100,000 gold.

(496) Q. I suppose that would be one of your liberal estimates; you spoke in your testimony of making liberal estimates, is that true of that? A. Yes; I have, of course, omitted the cost of repairing the 6 kilometers.

Q. How much do you make it in that case? A. About $120,000. I call that a liberal estimate.

Q. Now, you have included the repairs on the line, have you not? A. I have not included anything else; this is down to the end of 1893.

Q. Quite so; how much is it? A. $120,000, including

the cost of repairing the line between Cordova and the end of the track, 27,100.

Q. Now, since Jan. 1, 1891, Mr. Cherry gives these two items: Repairs to the old line, $56,500, operating the line since Jan. 1, 1891, $28,840; that makes a total of $85,340, so that there is a difference between your estimates and Mr. Cherry's estimates of about $35,000. A. Is that estimate on all of the line to San Jose up to 1893?

Q. We assume that it is: what is your estimate of the cost of surveys to Cali? A. About 18 or 19 thousand dollars.

Q. Did you include this in your expenses, when you figured it at $17,000 or 18,000? A. The total of survey is figured at $22,800.

Q. What do you mean by the total of surveys? A. I mean the surveys to Cali.

Q. Now, here I find surveys to Cali $25,200; do you consider that incorrect? A. That is more than I estimated it.

Q. Do you consider it incorrect? A. As I said, my total surveys to Cali, including everything, is only $22,500.

Q. I did not ask you that? A. Well, I consider it incorrect.

Q. Is it excessive? A. It is more than I make it.

Q. Is it incorrect? A. It is possible that mine may be incorrect.

Q. How much do you estimate the cost of the work erecting the steel bridge? How many bridges were there? A. Two.

(497) Q. How did you estimate the cost? A. There was the cost of erecting about $4,000.

Q. I did not refer to the cost of erection; what would they cost, all told? A. About 18 or 20 thousand dollars; I can refer to my estimate.

Q. Please do so? A. $22,000.

Q. For the two? A. Yes.

Q. I have here, for the steel bridges, $9,066 for the one called the San Cipriano, and $6,984 for the other, placed at Colombia. Now, as well as you are able, you estimate the San Cipriano bridge cost $12,000? A. Yes; total cost.

Q. Do you know what was paid in New York for that bridge? A. I ascertained from the Company's claim.

Q. How much? A. Cost, taken from the Company's claim, $6,500.

Q. That is right; how much was the cost of the cylinders? A. There were four?

Q. Yes. A. $1,289.33.

Q. What was the freight on these to Buenaventura? A. The freight must have been less than I have allowed; I have allowed $25 per ton.

Q. How much does that make? A. $2,000, gold. I think it is excessive.

Q. Please assume that it cost $2,138.56, for the purpose of calculation; now please add these sums up? A. I have taken $1,289.23 as the cost of eight cylinders; I assumed that was the cost of the abutments of both bridges.

Q. So that, if it turns out now that it was for four cylinders, your calculation would be wrong, would it not? A. That is so.

Q. There would be the slight difference of $1,200? A. Yes.

Q. Now, what was the cost of the landing? A. I have figured that high.

Q. How High? A. $496.80.

Q. If it turned out that it cost $1,000, you would con-(498) sider that very high, would you not; you would be surprised? A. Certainly; I should think that pretty high to land 82 tons.

Q. Now, at what have you estimated the freight to the place of location? A. About $500 or $600 in Colombian money.

Q. If it cost $1,000 you would be surprised? A. I should be very much surprised.

Q. But they were large pieces, were they not? A. Yes, certainly.

Q. Now, what was the estimated cost for cement in the construction of that bridge? A. I have made no estimate for cement.

Q. I see; you have forgotten; you admit, then, that you have forgotten this? A. Yes, I confess that I have.

Q. We shall make you confess to a good many more things shortly. Now, how much cement was there used in that bridge that you say you have forgotten? A. I do not know.

Q. You do not know; why, that is the first time you struck something you do not know. Please make an estimate, Mr. Carter, as to how many barrels of cement, Mr. Carter, were used in the construction of that San Cipriano bridge. A. I should say about 120 barrels.

Q. As many as that? A. Yes.

Q. You would be surprised to hear that about 300 barrels had been used? A. It is possible that there may have been, though I do not think there could be as many.

Q. And you would be surprised if it could be shown

that they were used, although you have forgotten cement? A. So far as cement is concerned, I see that I have made a mistake.

Q. Now, assuming that 300 barrels were used (you were not liberal there), what do you estimate the cost of these barrels of cement here? A. It depends upon the quality; not more than $2.50 per bbl.

(499) Q. What would be the freight? A. About $6 gold per barrel, including freight.

Q. Does that include landing? A. No; say 50c. per barrel for landing.

Q. You can assume that it was $1 per barrel, for the purpose of calculation—which it actually was—now, how much would the freight to the location be? A. At the rate the Company charged, it would be $4 per barrel, Colombian money.

Q. That is right. Now what would the cost and freight and all, $9 per barrel, on 300 barrels, amount to? A. $2,700.

Q. Quite right; now that is a part of the cost of the bridge that you forgot about. Now, how many men were sent with this bridge? A. About 4 men.

Q. Do you know what pay they got? A. I think I saw that from the claim.

Q. You can refresh your memory from your papers; how much was it? A. About $2,500 for passage and salary.

Q. Please separate the items; how much for passage and how much for salary? A. About $1,800 for foreign labor on the bridge.

Q. Is that your estimate? A. That is what I estimate it here.

Q. Add to $2,700 for the cement, freight and landing, $1,000, and the expenses in Buenaventura, $1,000; and add to that $9,972, what do you make—no, what is the pay-roll to December, 1892, on this bridge? How do you estimate that? A. I have estimated that the native labor cost about $1,248, C. C.

Q. You mean the total workmen outside of these four bridgemen? A. I have included in the eighteen hundred dollars the foreman in Colombia and two foremen not sent out from New York.

Q. How much did they get out of the $1,800? A. I find that the bridgemen cost $1,300.

Q. You can assume it to be $1,530 for the bridgemen.

(500) Now what was the pay-roll of the San Cipriano bridge? A. I have not separated that.

Q. Please separate it. A. I cannot do so here.

Q. Now, take the pay-roll in the aggregate on the San Cipriano bridge, how much did it amount to in December, 1892? A. About $600, Colombian currency.

Q. I suppose you would be very much surprised to learn that the pay-roll up to December, 1892, was $3,500 gold? A. I should; it is excessive.

Q. Have you included work in the machine shop on this bridge in your estimate? A. I did not know of any special work in the machine shop on this bridge.

Q. Are you sure of that? A. There cannot have been a great deal.

Q. Did you figure upon any rails that had been used in filling the cylinders? A. No.

Q. You did not? Now, allowing that the cylinders were filled with rails, about how many would you figure it? A. I could not figure it at all.

Q. Can you not estimate how many rails it would take? A. No; I do not know how many rails.

The CHAIRMAN: Q. Was concrete used? A. The concrete that I figured for was to go into the cylinders; also for the defenses for the cylinders. The excavation was made until they reached hard gravel and then was filled in with cement and concrete.

Q. Were there no stone abutments? A. No; there were not.

Mr. STINE: Q. This bridge was finished in February, 1893? A. No; before.

Q. When? A. Probably in January, 1893.

Q. When was it finally finished? A. They were painting it for a number of months after erection.

Q. Now, leaving out of the question these things you know nothing about—work in the shop, rails in the cylin-
(501) ders, and so forth—figure up what the cost of these separate items was. Take my figures; perhaps I can save time by reading that it amounts to $19,703.56. I suppose you cannot make up an estimate of what these other items would amount to? A. I cannot do so impromptu.

Q. Please consider the matter, and take work in the machine shop, rails used in filling cylinders, pay-rolls during January and February, and cement? A. Just here I will say that all the cement was not used when the bridge was built. A good deal of it was used in constructing walls for protecting it later on.

Q. Can you say what percentage was used in that way; have you any idea? A. O, yes; I could estimate it, but not just now

Q. Still, altogether there is quite a discrepancy be-

tween your estimate and the Company's figures? A. Yes, very large.

It being 1:55 P. M., the Chairman declared the meeting adjourned until 2:30 P. M.

CROSS EXAMINATION TAKEN UP BY MR. STINE AT 2:34 P. M.

Q. Mr. Carter, you expressed some surprise, I believe, at my statement that you might assume the pay-rolls for the iron bridge for '93 amounted to $3,500? A. It seems excessive to me.

Q. Will you look at this paper and state how it is headed? A. "Distribution of pay-rolls, 1892, in construction, operation, engineering and iron bridge."

Q. Well, now, under bridge there is an item? A. Yes.

Q. How much is it? A. It seems to be $13,270.65.

Q. I do not ask what it seems to be; what is it? A. I see that total opposite the bridge account.

Q. Now, during that time, were they building other bridges besides the iron bridge. Were there no wooden bridges? A. Yes, there were.

(502) Now, down here, I see "Resumen." I see construction, $108,162; operating, $45,156; engineering, $22,245; iron bridge, $6,938.25; translated into gold exchange at about 100%, that would be about how much for the iron bridge? A. About $3,500.

Q. So that if that statement is correct, the statement of the pay-rolls on the iron bridge during that year are very much in excess of what you estimate? A. No, it is not very much in excess of what I estimate.

Q. What do you estimate; I am speaking of the pay-rolls on the San Cipriano bridge. A. My impression is that some work had been done on the Sucre bridge up to the end of the year 1892—

Q. Please answer my question. If $6,938.25 is to be taken as a correct statement of the pay-rolls on the San Cipriano bridge, and that translated into gold would be about $3,500, it would be very much in excess of what you estimate the pay-rolls on the San Cipriano bridge? A. Yes.

Q. Quite so. Now, what do you estimate up to the 30th of September, 1893, the amount spent on construction beyond San Jose, up to that date? A. I did not separate that in my estimate of work done.

Q. Can you separate that now? A. Approximately.

Q. Please give it to me approximately, according to your own figures? A. About a quarter of the work had been done beyond San Jose.

Q. Please translate it into dollars and cents. A. Not more than three or four thousand dollars gold; that is my estimate.

Q. Is that as accurate as all your other estimates? A. No; some of my other estimates may be more accurate than that.

Q. Do you consider that that is a fair estimate of what the cost was prior to the 3d of September, 1893? A. No; I am mistaken in the date; more work had been done then. The whole amount was six or seven thousand dollars; I think that is the amount that had been done.

(503) Q. I see; now, I find here in this report, which you state is in Mr. Cherry's handwriting: "Construction beyond San Jose, $43,500;" you have made an estimate of $86,000; do you consider that liberal? A. Yes, I do.

Q. Do you consider that there is a variance of between the two estimates of at least $37,000? A. There seems to be.

Q. You think that Mr. Cherry made a mistake, and overstated the amount? A. I think he did.

Q. Then you think he has overstated the construction of the sixteen and one-quarter kilometers; you think he has overstated the repairs on the old line; the operating of the road from Jan. 1, 1891; surveys to Cali; cost of erecting the steel bridge; also overestimated the construction beyond San Jose by not less than $37,000? A. No; I am not prepared to state that he has overestimated as regards all these items.

Q. I see; but yours are in excess of his, I believe on the operating; now what do you understand by the old line? A. I understand the line up to Cordova.

Q. Well, assuming that this intends the same—then adding these two figures together, $56,500 gold, for repairs on the old line, and $34,000 operating the road from Jan. 1, 1891 (that refers to the whole of the line), making together 85 odd thousand dollars, and you made it 120 thousand odd. Do you think, therefore, that Mr. Cherry has underestimated these two items by at least $35,000? A. I am not sure that he has.

Q. Did you not so testify? A. I do not recollect, no.

Q. Assuming that you did make it $125,000, then Mr. Cherry has understated it to the extent of about $35,000? A. My own is probably a safe estimate.

Q. Do you consider it a liberal estimate? A. My estimate for ties, etc., was very liberal.

Q. Do you think that an estimate, on which two items of that kind—the total amounting to $125,000—can be (504) $35,000 out of the way; assuming that the data on

which you based your estimate was reliable, can be taken into consideration? A. I think my estimate is more reliable for the reason that I believe I am nearer right in my apportionment of the expenses, between the cost of operation and expenses, than the Company is.

Q. You think that these estimates, which are based upon your assumptions entirely and are not backed up by the actual facts in the case, but simply by hypothetical assumptions are to be considered more correct, and greater credence, is to be applied to them than to the statements made by the officers of the Company, and taken from the books of the Company? A. In regard to some items; yes.

Q. That is not an answer? A. I so say because my estimates are not based entirely upon hypothetical basis, but they rest on evidence in many particulars.

Q. All right; we will leave it at that. Now, what do you estimate the amount of materials and supplies on hand? A. At what time?

Q. I mean the end of 1892? A. I took no inventory at that time.

Q. What is your estimate; have you not taken into account what materials and supplies were on hand at that time? A. Yes; the inventory was valued; do you ask if any estimate has been made of the materials at the end of 1892, when the Company gave up the concession?

Q. No, I mean the end of 1892? A. I have not made an estimate to that date.

Q. Can you make an estimate? A. No, because I do not know what was on hand.

Q. Well, Mr. Cherry states that there was $45,000 materials and supplies on hand at that time. Do you consider that excessive? A. I do not know whether it is excessive or not.

Q. You do not consider it at all in your estimate? A. I do.

Q. Then what did you make your estimate of material (505) and supplies on hand; did you have an inventory? A. I had an inventory which which enumerated the items.

Q. No, I mean did you have an inventory made up by any person connected with the Company? A. Yes

Q. From whom? A. I took it from Mr. Cisneros' office.

Q. I do not refer to that; I am referring to 1892; you have no knowledge of what was on hand, do you think that Mr. Cherry would have stated that he had $45,000 worth of materials and supplies on hand if he did not have them? A. I suppose not.

Q. You do not think he would? A. No.

Q. Now we come to another subject; bear in mind that this also refers to work done up to the 30th of September, 1893; now, have you any means of estimating the total number of cubic yarks of work that was completed on that portion of the road of which we have been speaking? A. We have been speaking of several portions of the road.

Q. I mean of all completed up to that time? A. Yes.

Q. What do you estimate that should be up to the 30th of September, 1893? A. I have estimated the number of cubic yards up to the end of 1896; to Sept., '93, there would probably be about 90,000 cubic yards.

Q. Is that as accurate as all your other estimates? A. Probably it is.

A. And it is derived from the same general sources of knowledge? Q. It is derived from more reliable sources.

Q. I will read to you from this report: "On the part of the line constructed by the Colombian Construction and Improvement, we have excavation and filling 54,875 cubic yards; conglomerate, 131,375 cubic yards, making a total of 186,250 cubic yards." Now, what have you testified to on the subject? A. I have testified that there was a good deal less.

Q. How much? A. Up to the end of September, about 90,000 cubic yards.

(506) Q. You have also testified that this was two-thirds earthwork and one-third conglomerate? A. No, I do not know that I did.

Q. What did you testify? A. I think about one-third conglomerate, but there were other classes also.

Q. Now, how much would you put into each of all the three classes in the 90,000 cubic yards, don't you know? Consider that this report was made up to Sept. 30, 1893; having that in mind, what do you state the amount of yardage moved; meaning, as you say 90,000 cubic yards, how much of that was conglomerate, 30,000? A. I think about 40,000 conglomerate for the entire period of the six years.

Q. You did not so testify the other day? A. I am not sure of that.

Q. How would it be up to the 30th of September, 1893? A. It would be less than I have estimated, four or five thousand yards less; of course, I am speaking of conglomerate alone.

Q. That would bring it then down to about 36,000 yards? A. Yes.

Q. How much loose rock was there, considering that

there was 36,000 conglomerate? A. About 27,600 loose rock; that is for the six years.

Q. Take it for the six years, if you like, you can divide it by to-morrow; give me up to the end of the six years; how much loose rock? A. 27,600 cubic yards.

Q. How much earth was there? A. About 45,000 cubic yards.

Q. What is the sum total? A. 108,000 cubic yards, more or less.

Q. So that there is a discrepancy between your figures and those of Mr. Cherry of 108,000 as against 186,000, and there is further discrepancy between your figures, you allowing 36,000 for conglomerate and Mr. Cherry stating the conglomerate (blasting) to be 131,375. Now, I desire to read the following: "On the part of the line constructed (507) by Mr. Cisneros and the Government, earth excavation and filling, 164,564 cubic yards; stone blasting, 29,158 cubic yards, making 193,722 cubic yards; on the part of the line constructed by the C. C. & I. Co. we have: excavation and filling, 54,875 cubic yards; conglomerate (blasting), 131,375 cubic yards, making a total of 186,250 c. y.; summary: total work done by Mr. Cisneros and the Government, 193,722 c. y.; total work done by the C. C. & I. Co., 186,250 c. y.; excess by Cisneros and the Government, 7,472 c. y." Now, this apparent excess will be overcome, if to the work done by the Company is added the work done, according to Mr. Cherry, after the 30th of September, 1893; is that so? A. I do not understand the question.

(Question repeated.)

A. O yes; more than 7,000 yards after September, 1893.

Q. How much, in your opinion, after? A. Probably about 10,000 yards or less.

Q. Now, in this connection, looking at the statement, I find that the hard pan and blasting done by Cisneros and the Government (apologies on the part of Mr. Stine for familiarity in addressing Mr. Cisneros as "Cisneros," being simply a quotation) amounts to 29,158 c. y. Have you ever seen the profiles and surveys of the Cisneros portion of the road? A. I have.

Q. Which was the most difficult to build? A. Some portions of the work done previous to the Cauca Company taking the road were heavier and some portions lighter.

Q. That is not a full answer. I asked which was the most difficult, taking kilometer by kilometer, which of the two contractors had the most expensive work? A. On some

portions of the line the work was lighter than done by Mr. Cisneros and the Government and *vice versa*.

Q. Which had more heavy work; I mean kilometer by kilometer? A. Taking kilometer by kilometer, from Buenaventura, I should think the work done by the Company (508) was heavier, because from Buenaventura for the first 10 or 15 kilometers there was no conglomerate, but in the portion east of Cordova, constructed by Mr. Cisneros, there was a good deal of conglomerate.

Q. I read further: "On the work by Cisneros and the Government less than 15% required blasting; the work by the C. C. & I. Co. more than 70% was rock and required blasting by dynamite. Total time consumed by Cisneros on 20 kilometers, 8 years; total time consumed by the C. C. & I. Co., 16.400 kilometers, two and a half years." Is that a correct statement? A. I do not know how long it took Mr. Cisneros.

Q. Now, it states here the cost of the 20 kilometers built by Cisneros and the Government; the cost on a gold basis was more than $2,250,000. Have you looked at the book published by F. J. Cisneros called "A Report on the Project of Constructing a railway from the Bay of Buenaventura?" A. Yes, I have.

Q. Have you noticed the estimate of the cost in that book? A. Only in a cursory manner.

Q. Well, then, I will not examine you at present on that point. Now, here it says the cost of 16,400 kilometers, and repairing the line of Cisneros, $431,390 gold coin; that is very much in excess of your estimate? A. Yes.

Mr. Cherry goes on to say: "This comparison would not be complete without knowing that Mr. Cisneros had the Colombian Government for a partner, and that in addition to having the Treasury constantly open to him, he had the Government's power and authority in procuring labor and supplies, and the Government helped him in every possible way." I am stating this for the benefit of Mr. Cisneros, who appears to be very much amused at the reference. Now, what did you testify that the traffic receipts were for the completed portion of the road, measuring the 36 4-10 kilometers, Mr. Carter? A. For the six years $234,000.

(509) Q. Can you make an estimate down to and including the 30th of September, 1893? A. I can, if you will allow me to state that probably for the first three years my estimate of the receipts would probably not be exact, because I have estimated for the six years, and, having taken an average, this amount is probably more correct than an estimate for the first three years would be.

Q. That is not an answer; I want to determine the accuracy of your calculations. I want to know from you what you figure the passenger and freight receipts from Jan. 1, 1891, to Nov. 1, 1893, as nearly as you can? A. These first years it would be $95,000 gold.

Q. Is that freight and passengers for '91, '92, '93? A. Yes, to the 1st of November.

Q. I will read what Mr. Cherry has to say: "Traffic receipts on the completed portion of the line—36.691 kilometers—are as follows, in Colombian money (I see you are pretty accurate this time; you have shot very near the mark): Freight, $160,920; passenger, $13,248; making a total of 174,168; in gold at 100% about 887,000. Now, you take exchange at 133%; please make your figures at 100% exchange. A. Figuring at 100%, it would be about 863,000.

Q. So that you are at least $22,000 different from Mr. Cherry's estimate, if his is correct; so that in view of that discrepancy the Company received more than you estimate, to that extent, $23,000. Now, what percentage of this do you allow for operating expenses? A. Nearly the whole of the amount, because no apportionment had been made to construction.

Q. Mr. Cherry says 40% deducted for operating expenses, amounting to $34,833.74, leaving a net profit on traffic to Nov. 1, 1893, of $52,250.61 gold, whereas you have not allowed any. A. Very little, because it went into construction.

Q. In the figures given by you are not charged any portion of the expenses for train expenses, timber, repair- (540) ing track and bridges, shop expenses, etc., in that connection. Some of that should be charged to construction. Now, Mr. Carter, as you have stated, much work was done in the way of removing earth and rock and conglomerate between K. 29 750 and Sucre, which I believe is about K. 34,500; is that so? A. That is right.

Q. Please state how much? A. I can state it approximately.

Q. I wish you would. A. about 46,000 yards; between forty-five and fifty thousand yards.

Q. 46,000; is that between forty-five and fifty thousand? A. I did not swear that it was 46,000.

Q. What is the maximum that you will swear to? A. 46,000.

Q. What is the minimum? A. I will not swear as to any maximum or minimum.

Q. I did not ask you to swear; it was you who mentioned the word swear. Do you say the maximum is

46,000? A. The minimum was 46,000 cubic yards.

Q. How much over might it be? A. I do not know.

Q. Was it fifty thousand? A. No, it was not.

Q. Was it 49,000? A. I will give it exactly to you, if you will allow me a moment.

Q. I want to get exactly from K. 29,750 to K. 34,500, assuming from the 35th K. up to Sucre one-half the conglomerate was included? A. (After calculation.) 49,000 yards.

Q. Then you have raised the amount since last you testified? A. No, I omitted one kilometer; my addition was not correct; now, this is correct or approximately so.

Q. Now, you have testified that the total amount of the yardage between 29,750 and 36,740 was 73,600 cubic yards, and included in this was the 49,000 c. y. just referred to? A. That is right.

Q. Now, was this the estimated amount of yardage (511) that was to be moved during the time the profiles and surveys were made in 1890 to 1893? A. I do not know.

Q. Were there any changes, so far as you know, as to the estimated yardage, subsequently for 1891 and 1892? A. No work had any change after that.

Q. No; will you be kind enough to look at these papers and tell me if you know the handwriting? A. Yes, I know it.

Q. Whose is it? A. It is mine, or at least it appears to be; it is signed by me.

Q. Now, let us see what this letter says (quotations from letter read by Mr. Stine; letter being addressed to Mr. James M. Cherry, and dated Camp Caballete, March 12, 1891).

Q. How do you reconcile that letter with your statement? A. Perfectly. A report was made on the preliminary surveys; it was done on the 12th of March, 1891; the location had not been completed, and it was only a preliminary statement, and engineers are always careful to make liberal estimates on preliminary surveys; I said 76,000 yards was from Caballete to Sucre. It was a prudent statement, for the reason that I did not wish the result to be more than I estimated; I had made no final location at the time. I recollect that Mr. Cherry was himself at Caballete that day, and was just about leaving for New York; at any rate he did not leave later than the 15th, and he wanted an estimate, of course, up to Sucre, because new work had been done beyond Caballete. He wanted to know approximately what was the amount of work that had to be done.

Q. So you gave him an estimate of 27,000 cubic yards

out of the way? A. Probably because I supposed he meant to make banks and fill in the ravines. There were between fifteen hundred and two thousand lineal feet of trestle bridges.

(512.) Q. In giving your evidence the other day, you stated that the line had been lengthened, and you did not think it was good practice to lengthen it? A. I was asked if I thought that it was an improvement.

Q. Was that the practice which you referred to when you said that the new road would be about 2 miles longer than the Cisneros road? A. That is all right.

Q. Did you think it would be a good plan to have a switchback and tunnel? A. I meant the Company intended to change the line from Caballete, and I calculated that it would be, more or less, about two miles longer than the Cisneros route. When I said it was not good practice to lengthen the line, I meant the line along the river.

The letter was offered in evidence, and marked for identification "Claimant's Ex. No. 53."

Q. So far as you can estimate from the profile, the Cisneros location included a switchback and tunnel, or one or the other—

Mr. CISNEROS: It was one or the other.

A. As near as we could make out, it was both.

Q. Do you know Mr. Wilson? A. Yes, I do.

Q. He is present? A. Yes, I see him.

Q. He is an engineer? A. Yes.

Q. Was he engaged in the surveys? A. He was.

Q. Is he a truthful man? A. I believe so.

Q. Now, if he swears that in his opinion, figuring on the profiles from K. 29.750 to K. 35.400 amounts to 76,000 cubic yards, would you think that is an honest opinion?

Objected to by Mr. Robertson, who said that Mr. Wilson's opinion was not under discussion.

It being 4 P. M., the meeting adjourned until 9.45 A. M. on the following day, it being understood that meet-
(513) ings during the present week would be from 9:45 A. M. till 1:30 P. M., unless otherwise agreed on.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Seventeenth Session.

(514) Held at 30 Broad street, on Tuesday, the 10th August, 1897, at 9:30 A. M.

Cross examination of Mr. Carter continued.

Present: Commission, Attorneys and Counsel as before.

The chairman called the meeting to order at 9:50, stating that the Commission would proceed with the cross examination of Mr. Carter.

CROSS EXAMINATION TAKEN UP BY MR. STINE FOR THE CAUCA CO.

Q. Under examination yesterday, I asked you whether you had made all these approximate estimates on the strength of any field notes that you possessed, but I understand you to say that you had no such field notes. A. I so stated.

Q. Did you have any facts other than those to which you have testified; I mean authentic sources of information, such as books of account or official records on which to base all those calculations which you have made, excepting, of course, the profiles, on the basis of which you have probably made calculations as to quantities? A. I had no books of account.

Q. What other source of information han you besides the profiles? A. My own knowledge of the work.

Q. Then your own knowledge of the work, as you call it, was the basis entirely of all the evidence that you have given, except that which you have testified to as to profiles? A. Not all.

Q. What was there not included? A. I saw the claim presented by your Company.

(515) Q. Outside of that claim? A. I have used records of Mr. Cisneros' work on the K. 2,650.

Q. Well, these you necessarily changed to conform with the work of this Company? A. No, I do not consider that they were.

Q. What do you mean; please explain? A. It was a profile showing the located line beyond San Jose that I used.

Q. With regard to the quantities? A. Yes, on this profile was noted the quantities.

Q. I did not refer so much to the quantities, I refer to your totals which you have testified to as to costs, income, receipts, expenses, operating expenses. All these figures were not derived from or based on any facts derived from

original sources of information, were they? A. They all originated from my own knowledge of the work as I could recollect it.

Q. Now, I want to ask you whether or not it is a fair assumption for this Commission to take for granted that the facts which you have testified to in respect of other things are to receive the same credence and the same weight that you wish to have attached to what you have already testified. For instance, I have attempted to draw out from you what you knew about the cost of the work, about the amount and character of the different yardage that had to be moved, I have called your attention to the discrepancy between your estimate of earth and conglomerate and Mr. Cherry's estimate as to earth and conglomerate, and so forth, and to all these questions you have testified, in some instances you have acknowledged, or confessed, as you state it, that you omitted certain things or changed certain calculations. Now, you were examined at some length on the question of the number of men that were employed by this Company at various times, and you went into extraordinary detail in that connection, giving the greater or smaller number of men at work from month to month; will you state whether or not your knowledge of the number of men (516) employed from month to month was based on what you have called your knowledge, or upon any information that you derived from original sources or from actual counting? A. It is derived from my own knowledge and recollection.

Q. Now, Mr. Carter, you have testified here almost a whole day or a day and a half on the question of the number of men employed at different times by this Company, and I think that your evidence will either stand or fall, so far as this Commission is concerned, according as it finds that you were accurate or not, in this particular. Do you reiterate now that what you testified to was the truth and was in accordance with the facts, so far as you understood them? A. I do.

Q. You testified to a certain letter which you had written to your brother in 1893; what was the date? A. Nov. 6th.

Q. You stated that after hav ng testified the day before as to the number of men employed in November and December, 1893, in which you testified that the number employed was between 50 and 75; that you had had occasion to refresh your memory by reason of a letter which you had in your possession which you said you had written to your brother and that after reading that letter you were forced to the conclusion that you had overstated the num-

ber of men that were employed by this Company during those months. A. At that particular time, yes; I overstated the number.

Q. Now, let us understand this thing exactly. When you say that a certain number of men were on construction at a particular time, say the month of November or December, 1892, do you want this Commission to understand that you had no original source of informatian at the time that you made the estimate as to the number of men there? A. No more original source of information than my own knowledge and recollection, having gone over the work, and I knew a great many of the men personally by name. (517) Q. Now, how many men during these particular two months of November and December, 1892, were employed in operating the road? A. I could state that very approximately; about 70 men were employed on operation in November, 1893. There were five gangs of 12 men each, with a foreman, making 65 men, and about 10 men working on bridges.

Q. One minute; let us understand what you mean by operation. When I speak of operation of the road I do not mean maintenance. I mean the actual running of that road. I do not mean reparation of bridges and I do not mean the keeping up of the track. I mean locomotive engineers and conductors and the office force which is necessary to control the payments and receipts. I mean operation as it is usually understood by financiers and railroad men. It may be that engineers have a different meaning? A. I understand it in the same light.

Q. How then do you explain that when you testified that there was no local traffic, how do you explain that under these circumstances it took 75 men to operate the road? A. I explain by saying that it would take 75 men. 75 men were employed in the performance of all classes of work; that was, repairing track and bridges and so forth.

Q. Don't you call it maintenance? A. I do.

Q. Which is it? A. I include it as maint nance.

Q, I see. Very well, you include maintenance. Now, you say 75 men were operating and maintaining the road? A. About 75, more or less.

Q. Were there any other men? A. I will enumerate the men employed. In the station at San Jose there was a freight clerk. In Buenaventura, Mr. Blum and myself; in the station there was a freight clerk; for a portion of the time he had an assistant. Then one conductor, not constantly, because frequently one of the brakemen would collect the tickets; probably during the half of the year '93 and '94 there was no regular conductor on the road at all.

(518) The CHAIRMAN: Please be as brief as you can; we want the number of men employed.

A. There was a blacksmith and helper, two carpenters, and there was another man who was a mechanic, about three or four employed as assistants in the shop, then there was a regular locomotive engineer, his fireman, and generally 8 brakemen, and also another locomotive engineer who did extra trips.

CHAIRMAN:: Q. No local station agents? A. Only at San Jose and Buenaventura: none intermediate. At present I do not recollect any more men.

Mr. STINE: Q. That is about 30 and 75 on operation and 40 that you stated were on construction during these months. A. Probably less; I do not know how many less.

Q. If we estimate at 40, do you think that high? A. That is rather high.

Q. Would 35 be high? A. On perfectly new construction work beyond San Jose that would be high.

Q. But I am not alluding to beyond San Jose. You have already said 75 men on maintenance and 30 men on operation, and on construction you say now at least 35 men? A. It is very probable that there were more than 75 men on repairs of road at that time. I have taken 75 men as the average for the last three years, because when the track reached San Jose it was lightly constructed and in very bad condition, and a great deal of work had to be done on it.

Q. Well, you said 75; about how many do you think there were then, if there were not 75? A. Probably 25 or 30 men more during those months.

Q. And how many on construction? A. The men at (519) this time were moved backwards and forwards so often that it is difficult to remember. The men were taken from construction and placed on repairs, and so forth.

Q. Well, then, what do you make the total altogether? A. I don't think the total would be more than 150.

Q. But the secretary says that they sum up 170? A. That would be about right.

Q. Do I understand you to say that the average number of men employed on what you call operation—on what you call maintenance—was about 75 men? A. Not all the time.

Q. Well, what was it? A. When there was no particular requirements for the men they would be sent out on construction.

Q. Well, during your testimony, with the exception of a very small number on operation, you have testified to the

number of men on construction; in many instances this number was brought down very low, sometimes down to 30 or 40, and even less? A. Very frequently less.

Q. You did not want me to understand when you testified as to 30 or 40 men employed on construction, that this was the entire pay-roll of the railroad, did you? A. I did not suppose the Commission so understood.

Q. I want it clear that you did not intend to convey that? A. I did not intend to.

Q. When you stated the number of men on construction during these different months, you figured that, generally speaking, there would be 75 men employed on what you call maintenance of the road? A. When I answer that question I say "Yes," and I say further that I have estimated the cost of the reparation of the seven kilometers—

Q. I did not ask that, and I don't want to know anything about it at present. Where were you in May, '91? A. In the neighborhood of Sucre.

(520) Q. Where were you on the 15th May, '91? A. Probably on the road to Cali.

Q. Where were you between the 15th May, '91, and the 15th June, '91? A. As nearly as I can remember, I must have been in Cali.

Q. Did you not see Mr. C. F. Schramme in Cali? A. I met him there.

Q. Did you have any conversation with him as to the cost of this road? A. I have no positive recollection in regard to that.

Q. You had finished your surveys then? A. No, not completely.

Q. What had you done? A. Reconnoissance—preliminary survey and part location.

Q. You recollect saying to Mr. Schramme, at that time, that it was going to cost a great deal more than Mr. Cherry had estimated to build the road? A. Very probably I did.

Q. Did you tell him that it would cost at least $35,000 per kilometer; are you sure that you did not tell him this? A. I am not sure that I did or that I did not.

Q. Well, now, the way you figure out the cost of the 10 kil., which you claim is all that this Company has built, what was, according to your estimate, the total cost of these 10 kilometers, including, of course, the part left done by Mr. Cisneros and the work beyond San Jose?

Mr. ROBERTSON: You mean construction?

Mr. STINE: Yes.

A. I do not remember the figures at all.

Q. Don't you remember the total estimates? A. I figured each section separately.

Q. Is it not a matter of fact that you figured it at $173,000? A. I have estimated surveys $22,805; cost on the K. 2.650, $40,652; the work from 29 750 to San Jose, (521) $133,546; beyond San Jose, $15,328—making a total of $212,332.

Q. Then, according to your estimates, the road cost $21,000 per kilometer; is that correct? A. The 10 kilometers were not completed.

Q. What do you mean? A. Well, I suppose it does come out about $21,000 per kilometer.

Q. Now, at the time that you saw Mr. Schramme in Cali in 1891, you recollect having a conversation with him, during which he complained bitterly to you of the cost of those kilometers which Mr. Cisneros had left partially finished? A. I do not recollect any bitter complaint at all.

Q. Do you remember any complaint at all? A. I don't know of any.

Q. What did you and Mr. Schramme talk about? A. It is very probable that we talked about the railroad, as that was a matter which interested both of us at the time more than anything else.

Q. You don't recollect stating that Mr. Cherry had underestimated the cost of rebuilding the road and also the cost of the extension of it? A. I do not recollect that.

Mr. Robertson objected to the question as referring to conclusion based on mere probabilities and that it was not testimony. Discussion ensued on the point, and the chair allowed the question as it might lead to bringing out other information.

Q. Now, Mr. Carter, will you please state, as nearly as you can, when you first went out on the survey of extension? A. About the middle of February, 1891.

Q. Where did you go, from where to where? A. I went from Cordova to San Jose, along the mule track.

Q. And how long did that take? A. I remained 3 or 4 days.

(522) Where? A. San Jose—near there; I remained there at night, at least; during the day I was out on the survey.

Q. That would bring us till at least the 19th of February, would it not? A. Probably; yes.

Q. What did you do then? A. Returned to Cordova, as near as I can recollect.

Q. How did you return, along the mule road? A. I returned part of the way along the mule road.

Q. Now, where did you next go to? A. I don't remember.

Q. Well, as near as you can?

Mr. Carter corrected his statement of the 15th of February to the 15th of January.

Q. All right; what took place then; we are now at the end of January, where did you go to then? A. I don't remember.

We are at the 25th of January, say; then what did you do? A. I don't remember; there was nothing to do at Cordova.

Q. So, at the end of the month you started away; where did you go to then? A. I moved to Caballete, as near as I can remember.

Q. How far was that? About 10 kilometers from Cordova.

Q. Now, at Caballete, what was there at this time? A. There was a rancho.

Q. Any track? A. No track at all.

Q. How long did you stay there? A. I was in camp there probably until after the middle of March—some time in the month of March.

Q. Then, during that time, you engaged in making various reconnoissances in different directions on the survey? A. Reconnoissances and surveys; yes, sir.

Q. Did you go back to Cordova or Buenaventura? A. Quite frequently.

Q. How often? A. Every week.

(523) Q. How were you in the habit of going back; over the mule road? A. No; while at Caballete I did not go over the mule road.

Q. How? A. I went down the line of the railroad.

Q. Was there a path? A. To the end of the track.

Q. Did you not have to go through the woods before you struck the end of the track? A. I passed just along the trail.

Q. Was not that a very inconvenient way of going? A Certainly.

Q. Why did you go that way? A. Because there was no other way.

Q. Would not the mule road do? A. No; because it was just as laborious to get to the mule road from Caballete.

Q. How far was it? A. In a straight line about 2½ kilometers, but one had to go over the mountains, through ravines, and so forth.

Q. Why did you keep going back every week to Cor-

dova; why did you do that? A. I don't remember just now.

Q. Try and remember; reflect a few moments; why did you go back every week from the end of January to the middle of March to Cordova, which is about ten kilometers; what was the special attraction at Cordova? A. No particular attraction at Cordova, except along the section from Cordova to Caballete the work was going on.

Q. But you were not at work on construction at that time? A. No.

Q. And your interest then was so great that you went back every week to see what was going on? A. Not entirely on that account.

Q. What other reasons? A. For change.

Q. Change of air or change of scene? A. Both.

Q. I see; did you have a camp at Caballete? A. Yes.

Q. How many men in that camp? A. About 15.

Q. Did they all go back for change of air and recrea-
(524) tion? A. Nearly all; on Sundays

Q. Did you go back on Sundays? A. Very frequently on Sundays.

Q. Was construction going on on Sundays? A. No.

Q. Oh, it was not; did you go back on other days? A. Not often.

Q. How many times? A. I do not recollect.

Q. A single time? A. I do not know.

Q. Twice? A. I do not know.

Q. In case you went back on any other day except Sunday, who was in charge of your camp at Caballete? A. Some one of those 15 men.

Q. Were they all natives? A. Not all of them; some white people.

Q. Give me one of them. A. Abadie, a Frenchman.

Q. Then it was your habit to go back over ten kilometers, over a rough road, along the trail on other days than on Sunday, and leave Abadie in charge of your camp, because you were interested in the work, and wanted to get a change of air and scene and recreation? A. Well, it was not so very difficult for me to get back, because I could go out on the construction train—the train that used to come out and bring rations to the men.

Q. Was that the way you did go back? A. Well, I walked from Caballete to Cordova but very few times, indeed.

Q. Then, you rode on the train at other times? A. Yes; or on a hand-car.

Q. Now, I suppose your estimate of the number of men at work from month to month, to which you have testified, was acquired in your trips as you flew past in the train, or on a hand-car? A. Partly.

Q. Would you be able to tell, from looking at a gang in that way, how many men were working in it? A. Trains never flew in that part of the country; they only went very slowly—not more than 12 miles an hour—and you could tell by observation the number of men.

(525) Q. Now, in going over the track in this way, were you sufficiently interested in construction as to be able to ascertain what was going on? A. I could generally see what was going on.

Q. Although you had your mind full of thoughts of recreation and change of air? A. That never crowded it out.

The CHAIRMAN: Is this not slightly irrelevant?

Mr. STINE: Excuse me, Mr. Chairman; I am trying to get out the mental process by which this witness, making the survey, going down the line occasionally on a train, would also observe what was going on in construction. He comes here six or seven years later, and has the hardihood to say how many men were employed from month to month on different sections of the road.

Mr STINE: Now, when you left Caballete, where did you go? You stated that you were at Caballete until the middle of March, 1891? A. Probably.

Q. Now, where did you go after that? A. My impression is that the next camp was Sucre Viejo.

Q. How far was that from Cordova? A. It was about seven miles from Cordova; something like that on the mule road. It was just on the mule road.

Q. Now, when you went to old Sucre, about the middle of March, how long did you stay there? A. I was in that camp when I left for Cali.

Q. When was that? A. Somewhere about the middle of May.

Q. Now, from the middle of March, when you went to Sucre Viejo, until the middle of May, when you left Sucre Viejo, being two months, how often did you go back along the line of the road, and see what was going on in the way of construction? A. I don't remember.

Q. Did you go once a month? A. Yes.

(526) Q. Twice a month? A. As often as twice or three times.

Q. Did you go three times? A. I am not sure how often.

Q. You think you went more than three times? A. I must have gone more than three times.

Q. And which was the most convenient way out—the mule road? A. Yes; but we did not use that, however, for the reason that by the middle of May there was a pretty good trail down to the end of the track; when I got a good horse, I use to ride along the mule road.

Q. Will you say you went back three times each month? A. Not positively.

Q. You mean, it might not be as often? A. Perhaps; or more frequently.

Q. During that time, are you sure that you did not use the mule road? A. I am sure I did; I have a clear recollection of using it once.

Q. How often do you think you used the mule road? A. I really don't recollect.

Q. Well, you say once; so that reduces your going over the road per month to 2½ times, allowing that you went three times each month? A. That is a pretty close calculation on your part.

Q. Yes, it is; now, during that 2½ times per month you were able to judge the number of men employed on the road; is that correct? A. Possible more frequently.

Q. You say but only from the 15th of March to the 15th of May; that was in 1891; that is seven years ago, is it not? A. No; a little over six years.

Q. Yes, that is right—a little over six years; now, do you want this Commission to understand that in making these occasional visits back to Cordova from old Sucre, which were three times a month, and which visits were made six years ago, would enable you to state, by actual (527) observation, as you have testified, how many men were employed on the construction of that road? A. I have no particular desire to make the Commission understood anything of the kind.

Q. You want the Commission to believe what you state? A. Yes.

Q. That is a legal form of expressing oneself; you want the Commission to understand that it is so? A. Yes; to the best of my recollection.

Q. All right; now, when you left Sucre, on May 15th, where did you go? A. I went to Cali about that time.

Q. How long did you stay there? A. A month, more or less.

Q. That brings us down to the 15th of June? A. Yes, about.

Q. Therefore, during the time from Jan. 15th to the 15th of June, that is five months, you went over that line

during March, April and May 6 times, and you went once a week from the 15th of February to the 15th of March; that makes four times— A. I went to Sucre on the 15th of January.

Q. You didn't so testify. A. I testified that I left Cordova, and went over the mule road to San Jose, near Sucre, and remained there about three days.

Q You stated that at the end of January you went to Caballete, and you stated that that was ten kilometers from Cordova? A. Yes.

Q. And you stated that you stayed there until the middle of April from the middle of March? A. Probably about the middle of March.

Q. Now, before that you testified that you went to Cordova—what is the first point on the line? A: From where?

Q. Where you started out? A. The first point is Caballete; I went with Mr. Cherry and Mr. Boyer; I think it was the first week in January.

Q. You stayed there four days? A. No; only a few hours.

Q. I mean on surveying? A. Yes; when I first went (528) out, it was probably about the middle of January, and then I went out to old Sucre afterwards.

Q. Right away? A. On horseback, yes.

Q. That was the end of January? A. Yes.

Q. How long did you stay at old Sucre? A. About three days.

Q. Then went back to Cordova? A. That is so.

Q. Then you started out again? A. I went to Caballete.

Q. How long did you stay there? A. Probably to the middle of March from the latter part of January.

Q. How many weeks? A. You can make the computation.

Q. Six or seven weeks? A. All of six weeks.

Q. And during that time you returned at least once a week over the track? A. I did not say at least.

Q. I so understood you that it would be six times that you returned, and saw what was going on. Then you went on further, did you not? A. I moved my camp from there to old Sucre

Q. And you stayed there about two months? A. Yes.

Q. And you testified that you went back about three times each month? A. More or less.

Q. That is six more times; then you went to Cali? A. Yes, about the 15th of May.

Q. So that, all told, you went back over the track

about 12 times during those five months? A. Probably I did.

Q. Now, in going back over the track, as you have testified, besides going for change of air and scenery and recreation, and for the purpose of seeing the construction, have you any other means of giving the number of men on construction? A. No.

Q. Do you not think that your statements thus based on that amount of observation are more or less guess work? A. Well, you might call it guess work; I do not think it is guess work; I do not think guess work is the term.

(529) Q. What is the term? A. I would say that I saw the men at Cordova, and they were camped right along the line; I will also say that they all went into Cordova for their rations; there was nowhere else for them to be; and from the number of men that I saw I have concluded that the number was more or less what I have stated.

Q. So that, when you gave your figures from month to month during those five months, they were based on the fact that you saw the men in Cordova, and in their camps? A. Also from hearsay—from other men besides myself who would go to Cordova.

Q. And you concluded that is sufficient to be able to testify as to the number of men? A. Yes, and I have a clear recollection of the whole thing.

The CHAIRMAN: Q. I would like to ask as to the character of those camps; how many, and as to whether an opinion could be formed as to the number of men in them? A. At Caballete, there were no camps; there were shanties; there was a camp at a place called Santa Rosa, where Mr. Davis lived.

The CHAIRMAN: I do not refer to your camps.

(Witness continuing:) The construction men lived in shanties which they built themselves. The men, at the time I am speaking of, had not built any camps for themselves; they simply had little shanties.

Mr. STINE: Q. Were those camps in the clearing, or sometimes in the woods? A. They were alongside of the track.

Q. All of them? A. No reason at all for going into the brush.

Q. And you could tell from the number of shanties there were there how many men were occupying them? A. Really, there were very few shanties.

Q. You could take the number in view, and calculated (530) the number of men that were distributed? A. Yes.

Q. You say that some of them were also housed at Cordova? A. Some of the men who worked on the San

Cipriano bridge lived in Cordova; one of the foremen used to go down to Cordova every day and come out on the construction train, going back at aight, and a good many of the men went with him.

Q. That brings down to the middle of June when you left Cali; where did you go then? A. I went to Buenaventura.

Q. What did you do there? A. Stopped there at the office for a few days; I did nothing.

Q. What did you do then? A. I went to Cabaliete again.

Q. How long did you stay at Caballete? A. I do not remember distinctly how long.

Q. What did you do there? A. I next revised the location.

Q. What did you do then? A. Looked after the construction at the same time.

Q. That brings you up to what time? A. The latter part of June.

Q. What did you do then? A. That was when I went to Caballete.

Q. How long did you stay looking after construction? A. I do not remember.

Q. Say about. A. I moved to Bodegas probably some time in the month of July, and I made my camp there.

Q. How far is Bodegas from Cordova? A. About 12 kilometers by the line.

Q. How long did you stay in Bodegas? A. I stayed superintending construction until Mr. Cherry left the country, in the latter part of October, 1891.

Q. Now, you say you were superintending construction; what part of construction were you superintending up to October, '91? A. I stayed more particularly just at the bluff at Bodegas; I had my camp there.

(531) Q. Now, how large a section were you superintending on construction? A. About 100 men at work.

Q. You stayed there from the end of July up to the middle of October? A. I went there some time in July.

Q. Was the work exacting; did it require much time and attention? A. Oh, yes.

Q Were you at work pretty constantly? A. Oh, yes; pretty constantly.

Q. From what time in the morning till what time at night? A. I got up very early in the morning.

Q. What time do you call early? A. Frequently before 6 o'clock.

Q. And how late did you work? A. In the evening,

while superintending construction, I would go out and work on the survey for a while, devising locations; we generally stopped work while the sun was two hours high.

Q. What do you mean? A. Say about 4:30.

Q. And during this time, from the end of July to the middle of October, did you go back along the line very often? A. Yes, very often.

Q. How frequently? A. I do not remember.

Q. Try and remember; you have remembered a number of things; you have remembered the number of men most accurately. A. Probably two or three times a month.

Q. And the information you have given as to the number of men employed was based on these visits and what you heard? A. Yes, and what I saw.

Q Now, after the 15th of October, what did you do? A. Until the end of October I remained in Bodegas; then I went to Buenaventura.

Q. How long did you stay there? A. I stayed until I left the country; I went to the United States about March, 1892—about that time.

Q. During that time, what were you doing? A. I (532) was left as engineer and superintendent on construction.

Q. And was it in March when you left the country? A. I think it was the first of March.

Q. And you returned in May? A. Yes.

Q. So you know nothing about the men during those three or four months? A. I do not.

Q. You have no idea? A. I have an idea.

Q. Not based on observation? A. No, but I gauged a number of men by the point where they were working when I left, and the amount of work accomplished during my absence, and I could in a general way form an idea of the number of men employed.

Q. When you came back in May, '92, with whom did you come back? Was it with Mr. Cherry? A. Yes.

Q. Was not Mr. Wilson present? A. Yes.

Q. When you got down there, what took place; how did you occupy your time, and Mr. Wilson his time, and and the other engineer? A. The first thing done was to get ready to start out on surveys; that was what we went out for.

Q. What did you do then? A. Then, I moved out and made a camp within 200 feet of where the present station building of San Jose is, and while there I was engaged in surveying that section of the country, because the road had not been definitely decided on at that time.

Q. That was in May, 1892? A. Yes.

Q. How long did you survey along there? A. Somewhere about the end of June.

Q. During that time, did you go back over the track very often? A. Not very often.

Q. How often? A. I do not recollect.

Q Then, your evidence as to the number of men in the months of June and July was based on your observation as you went back over the road during that time? A. Yes.

Q. And when you got through surveys at San Jose, that was about July, '92, was it not? A. Yes, I left in the latter part of June.

(533) Q. Where did you go? A. Junta; I made my camp there.

Q. How far is that from Cordova? A. About 34 kilemeters.

Q. How did you go to Junta? A. By the mule track.

Q. Was there no trail between Junta and Cordova? A. I do not know what you mean.

Q. I mean from Junta? A. No; no trail.

Q. How long did you stay at Junta? This brings us to the middle of July, 1892? A. Yes; I left there the latter part of July, '92.

Q. Yes; now that is 30 kilometers from Cordova, by the mule road? A. 34, more or less.

Q. Now, what did you do at Junta? A. I was occupied in surveying that section of the country.

Q. How long did you stay there? A. Probably a month; maybe less.

Q. That brings us to the middle of August; while you were at Junta, did you go back over the line? A. I went to Sucre.

Q. Not west of Sucre? A. I did not, though I am not positive.

Q. What was the object of your going back to Sucre? A. The object was to change the line in the neighborhood of Sucre.

Q. In going, did you go over the line of the road? A. Part of it.

Q. And the rest over the mule road? A. Yes.

Q. Now, after the end of August at Junta, what did you do then? A. Then I moved into the interior.

Q. What is the interior? A. I mean something like 50 or 60 miles east of San Jose.

Q. What station east of Junta was that? A. About 40 miles east of Junta.

Q. What was the name of your camp there? A. We called it Las Nieves.

(534) Q. That was when, in 1892? A. Along in August, I think.

Q. You were 60 kilometers away from San Jose? A. More than 60 kilometers.

Q. I mean about; I am not tying you down to a few kilometers. A. Probably forty miles from San Jose.

Q. How long did you stay there at that camp? A. I left the camp before the end of the month of August.

Q. Did you ever camp at a place called La Legua? A. I did.

Q. Was that the next camp beyond Las Nieves? A. Yes.

Q. How far is that? A. One league from Cali; that is why it was called La Legua.

Q. When were you there? A. The latter part of August, 1892, or September; I think the latter part of August, because this morning I saw a letter dated the 26th day of August; I am not sure as to the date I went there, but I think it was the early part of August.

Q. And how long did you stay at La Legua? A. I don't remember.

Q. About? A. Maybe six weeks or two months.

Q. Then from the time you left this camp before you got to Las Nieves, which was the latter part of August, where you had been about a month, you say you did not go back over the line once? A. No, I did not.

Q. Then you do not know how many men were employed at that time on the road? A. I did not see them.

Q. Then at La Legua you stayed six weeks? A. About; I don't remember.

Q. Did you go back over the line during that time? A. No.

Q. So you were absent during three or four months? A. More than that.

Q. How long more? A. I have no recollection whether during the time I was at La Legua I went to Buenaventura or not; possibly I did; I know I went down to Buenaven-
(535) tura in the latter part of November; that is about all.

Q. That would be how many months without going over the line? A. From the latter part of July until November—about 5½ months.

Q. Have you testified during any of these months, on your direct examination by Mr. Robertson, as to the number of men employed on the road? A. I have not.

Q. Are you sure? A. I think I did not testify that; I know I did not, because I was absent.

Q. Well, when you got through at La Legua, where

did you go then? A. Then I moved over to a place just on the east of the slope of the mountain, between the river and the summit.

Q. Summit of what? A. Western Cordilleras de los Andes, north of Cali probably about 25 kilometers.

Q. That took you further away from Cordova how many kilometers? A. Probably I would not be further away from Cordova.

Q. How long did you stay there? A. I don't remember.

Q. Well, about? A. I do not know when I went there.

Q. You just stated it must have been in November. A. I did not say that.

Q. Well, then, I misunderstood you; you may correct it. A. I possibly stayed at La Legua a month, and I probably moved to this latter camp some time in October.

Q. How long did you stay there? A. Well, I got there in September or the early part of October.

Q. And you returned to Buenaventura when? A. As I recollect it, it was the latter part of November.

Q. When you returned the latter part of November (536) what did you do? A. I went to work on my report of the survey.

Q. How long did that take? A. Making the maps, and so forth, I was there 2 or 3 weeks.

Q. That would bring us to December; when did you file your report and maps? A. In that month.

Q. What did you do, then, in December, 1892? A. As near as I can recollect, I went out on the survey near San Jose.

Q. How long did you stay there? A. Until the latter part of February, 1893.

Q. In other words, from the middle of July, 1892, until February, 1893, you were engaged all the time in surveying; making your maps and profiles connected with the surveys; is that not true? A. Yes.

Q. Now, after the middle of February, 1893, what did you do? A. My recollection is that I moved down to Buenaventura.

Q. What did you do there? A. I remained in the office in charge of the road—there was a little construction going on—and the operation.

Q. When was this? A. 1893.

Q. What month? A. I am referring to March, 1893.

Q. Why do you speak of a little construction that was going on? A. Because, at that time, the construction was

confined to the bridge; the force employed was engaged in repairing the road up to Sucre.

Q. How long did you stay in charge of the little construction, and the other work that was connected with the road in '93? A. Until I left in March, 1895.

Q. During that period, you have testified that some time in 1894 the construction force fell off to a few men? A. Yes; a very few.

Q. Was that the time the Colombian Government passed a law declaring that the Cauca Company had forfeited its rights to the road? A. At that time the number fall off and previously.

Q. Well, now, we have traced your movements in a general way; we are now coming down to some particulars (537) for the purpose of finding out various things. You stated that on the first of March, 1891, in answer to a question as to the average number of men employed on construction, that on March 1, 1891, there might have been 150 or 200 men. Was not that period part of the time you were on survey? A. It was.

Q. What do you base your knowledge on as to the number of men employed? A. Those opportunities I had of learning the number while I was living near the works, and on those visits when I went over the work.

Q. Now, during March, 1891, you stated that the number of men employed on construction work would be about the same as in February, 1891. How many was it in February, 1891? A. I suppose less than 200 men.

Q. What did you testify the other day of January, 1891? A. I do not remember; I can refer to the minutes.

Q. Do you mean to say that you wish us to understand that you can recollect the number of men employed six years ago, and give it within limits, as you have done, and that you cannot recollect from one session to another, which is only a few days? A. I can, certainly, and I will explain why I can. For instance, you might have asked me when on a previous occasion I went with Mr. Boyer, how many men there were at work; I think I said about a dozen; if you asked me the same question to-day, I might not remember that I said a dozen; I should remember that there were actually at work less than 20 men on that occasion.

Q. Do you call that an explanation? A. I do; I call it a very good one.

Q. I am glad you do; now during the month of February, when you testified as to the number of men employ-

ed, where were you? A. I was in camp at Caballete probably.

Q. So you were over on the surveys, and nevertheless you testified as to the number of men in the month of March? A. Yes.

(538) Q. Now, did not the number increase or decrease in March, 1891? A. I do not know; I am inclined to think the number increased.

Q. Well, you testified the other day, "I am unable to say; that is, I am unable to say they were materially increased or decreased," and you state just now that you are inclined to believe that there was an increase. How do you reconcile these two statements? A. There is no particular discrepancy when I said on the previous occasion that there was an increase or decrease, and when I say now that I am inclined to think there was an increase, because both answers are facts.

Q. What I mean is, did the number of men increase or decrease after March, 1891? A. I see; I misunderstood your question; the number of men was increased after the month of March.

Q. Now, was it the month of June or March during which there was an increase? A. They were increased after both months.

Q. Where were you during the months of March and June, 1891? A. Part of the month of March, Caballete; the latter part of June, Buenaventura; early part of June, up to the 15th. Cali.

Q. And while you were jumping about you kept track of the increase or decrease? A. No; I did not. That is the reason I cannot answer the question.

Q. You have an impression? A. I have an impression as to the number of men employed on the road.

Q. Now, you say that the number of men was increased after the month of March. To what number was it increased? A. I do not know exactly.

Q. Was it increased beyond 150? A. Yes; it was.

Q. Beyond 200? A. I think it was increased beyond 200.

Q. Beyond 250? A. Do you mean the increase or the total number of men?

(539) Q. I am asking if it increased beyond 200? A. Up to what time?

Q. Say up to June? A. Yes.

Q. How many did it reach in June? A. I suppose there were about 250 or 300 men.

Q. Where were you during the months of May and June? A. Sucre, Cali, Buenaventura and Caballete.

Q. Where were you in the latter part of June? A. Caballete.

Q. After July 1, 1891, was there an increase or decrease in the number of men employed on construction? A. I do not think the increase was very much. It would have increased somwhat.

Q. Now, what was it? A. I was there on the work in July, but I am unable to say; I think the number increased.

Q. You testified as follows: "Q. After July 1, 1891, was there an increase or decrease of the men on construction? A. There was; there was a decrease and afterwards an increase." A. That is right.

Q. That is in direct contradiction to what you have just stated. On July 27th you stated differentiy. A. When I say the number was decreased, it was decreased in the latter part of October, when Mr. Cherry left the country.

Q. Now, in answer to the question on July 27th, "State what the decrease was, and how long it continued, and what the increase was, and how long that continued," you answered: "For the months of November and December, I would say that the number of men on construction would be less than 200. When I said that there was a decrease I meant that it was at the end of October." Is that correct? A. It is.

Q. And according to your statement there were less than 200 men on construction in November and December, '91. Now, sir, during the months of November and December, 1891, how many men were there on operation? A. I do not know.

(540) Q. Give me an estimate. A. A good many men were employed in November and December in repairing the bridge at San Capriano

Q. About how many? A. I do not know about how many.

Q. Were there as many as forty? A. I think forty would cover the number that worked on the bridge.

Q. And how many were there besides on operation? A. At kilometer 29, in November, Mr. Pace had charge of forty men throwing up earth from landslides.

Any other men on operation or construction? A. Oh, yes.

Q. Where were they? That is what I want to get at. A. There were various gangs on operation and maintenance all the way right through to Buenventura.

Q. How many? A. They varied in number.

Q. Give them approximately. As many as seventy-five men? A. Not over 75.

Q. Now, in speaking of the bridge gang and the men employed on the landslides, are they included in the 200 men you have mentioned, or are they excluded? A. They are not included. I did not include the men engaged in repairing bridges and keeping up the track from Buenaventura and working on the landslides.

Q. Then your answer as to the number of men employed on construction might be misleading? A. No; because I was very careful in the way of speaking on construction. I asked for an interpretation of the term from the Chair.

Q. Besides the men on construction and on bridge work and on landslides, and the 75 men on maintenance, how many men were engaged on the road in any capacity? A. The forty men were not there more than fifteen days.

Q. No other men in any capacity? A. Of course; men in the shops, at stations.

(541) Q. Yes; you enumerated them at 30. A. I did not say it was 30.

Q. Was it more? A. I do not recollect.

Q. Enumerate them again, then.

After some discussion, the number was taken at 30.

Q. Were there any others on anything else? A. There was; there was a force of men at work with some contractors near Sucre.

Q. How many? A. I suppose they had fifty or sixty men.

Q. Say sixty? A. More or less.

Q. Were they not on construction—these contractors? A. The number of men employed were employed by these contractors. I did not include them in the estimated number of men on construction.

Q. Why not? A. Because it was a separate work, and paid for by the contractors. The number of men at work did not figure in the cost of the work.

Q. No one is talking about the cost of work. Why did you not include these sixty men? You are trying to make it appear that there were the least possible number of men employed on construction. A. No, I did not.

Q. Were there any other men? A. Besides those I have enumerated, I do not recollect any others.

Q. Do you think there were any others? A. I have no recollection.

Q. That makes 445 men, assuming that there were not less than 200 men on construction, of which you stated in your evidence that there was less than 200. A. Yes, I am sure there were.

Q. That applies to both November and December? A. I do not think the number would exceed that in November and December.

Q. Will you look at this, please, and state what is is? A. This is a pay-roll of the freight gang, headed: "Ferro-(542) carril del Cauca, Freight Rolls, November 16, 1891."

Q. Now, this freight gang, did it have anything to do with construction? A. No, I call this operation; I have included that in the 30 men

Q. Now, suppose you go through this—this purports to be the pay-roll Nov. 16th to 30th; suppose you figure up the number of men that were employed? A. Yes; but here is a man employed 1 8-10 days, and here is another two days.

Q. Yes, but here are sum 12½ and 13; why did you select the only man employed for one day? A. Because the sum total is 27 men and—

Q. You are showing a good deal of zeal in picking out these men A. You are zealous in trying to show that I have underestimated the number of men.

Q. I have not tried at all as yet to show that you have underestimated the number of men; I have shown that this witness has testified to there being 200 men employed at this particular date, whereas it now comes out there were over 445. I am trying to get at the facts, not only on construction, and in order to test the gross value of the evidence which is given, and its scope and its extent and its interest to the Commission, I have brought out these facts; I want to show that the pay-rolls show a considerably larger number of men than the 445.

The introduction of the pay-rolls was objected to by Mr. Robertson, who said there was such a thing as sneaking evidence into a case by bringing up a paper, which was not proven as being anything as yet.

Mr. Stine claimed that under the Convention the Commission was entitled to examine any papers that they choose to call for.

A further objection made by Mr. Robertson, and after some discussion the chairman overruled the objection, and said that in order to abridge the discussion the Commission would take one or two of the pay-rolls and verify (543) them.

Mr. Stine: Not only that; we will prove them later.

The chairman then authorized the reading of the pay-roll.

Objected to by Mr. Robertson.

Mr. STINE: Q. Kindly figure up the totals assuming that to be the pay-roll of the Ferro-carril del Cauca—

Mr. ROBERTSON: I object to the question on the ground that the paper submitted to the witness has not been proven to be authentic; there is no proof that it is a pay-roll of any kind, and there is no proof that it is an authentic pay-roll of this Company.

The chairman overruled the objection, and Mr. Robertson suggested that the paper be marked for identification.

The CHAIRMAN: The pay-rolls appear to be signed by Mr. Cherry at the foot of each sheet.

Mr. ROBERTSON: We do not claim that they are not what they purport to be, only we object to the introduction of unproven papers.

A. That is a pay-roll.

Q. What does it read, and for what period? A. It is the pay-roll from the 15th of November to the 30th of November.

Q. Is it classified construction and operation? A. There is a classification of engineers, mechanics, bridgemen, and so forth.

Q. What do they all foot up? A. (After additions.) I make it 541 men, but some of these men have worked only two days, and others—

Q. Please do not volunteer any testimony.

Mr. ROBERTSON: I understand that we are to be allowed to look at those papers.

(544) Mr. STINE: Certainly.

Mr. CISNEROS: Would it not be better to see the days each man has worked while we are about it?

Mr. STIME: It may be better for you, but not better for us; we propose to prove our case in our own way.

Mr. CISNEROS: So that if the whole 541 men only turned out, when added up, to be 50, you would leave it remain as it is.

Mr. STINE took objection to this remark on the part of Mr. Cisneros, and a lengthy discussion then ensued, in which Mr. Robertson, on behalf of the Government, objected to the introduction of the pay-rolls, and the Chair ruled that the chair thinks the Commission has the right

to call for any papers it desires on this subject, and will, therefore, call for all papers that can be introduced in order to get at the facts.

CROSS EXAMINATION RESUMED BY MR. STINE.

Q. Now, from Nov. 1st to the 15th, kindly figure up this paper which purports to be another pay-roll.

Same objection on the part of the Government, Mr. Robertson stating that it was understood that the same objection applies to all the alleged pay-rolls.

Q. I will now ask you to do the same figuring as regards these further pay-rolls, Mr. Carter, to the end of the month? A. From November 1st to 15th, 530 men—

Q. Well, we will suspend the examination on these. Now, Mr. Carter, did you ever hear of any contracts being made by Mr. C. F. Schramme in Cali for workmen? A. I have heard something of that.

Q. Have you heard that he made a contract once to have 500 men go down from Cali to work on the road? A. I did not hear that precisely.

(545) Q. Did you hear that he had contracted for a large number of men? A. I think so.

Q. Did you hear that his agents made advances to these men? A. I did.

Q. And the Company lost considerable money by these advances? A. I heard they lost money.

Q. Have you ever heard how much? A. If I did, I have forgotten.

Q. You do not know it was $10,000? A. No.

Q. Did you make any allowance in your estimate of what this road cost for the those losses? A. No.

Q. You left those out? A. Yes, left those out.

Q. Did you ever hear that Mr. Cherry had a number of Jamaicans from Panama? A. Yes.

Q. Do you know how many there were? A. I do not.

Q. Do you know whether there were 100? A. Over.

Q. 150? A. More than 150.

Q. Were there 200? A. I do not think there were 200.

Q. Between 150 and 200? A. That is my impression.

Q Did you ever hear that this Company had to pay their passage money from the Atlantic side to Buenaventura? A. I did not hear that.

Q. Where from then? A. I understand that the men were collected in Panama—whether this side of the isthmus or the other side, I do not know.

Q. Did you ever hear that the Company had made advances to these to these men prior to paying their passage money? A. I think I did.

Q. Did you ever hear what became of these men when they landed? A. Yes.

Q. What became of them? A. Some of them went to work on the railroad; others left that section of the country.

Q. How many went to work? A. I do not know.

(546) Q. Do you know how long they worked? A. Some of them were there when I left—in 1895.

Q. How many? A. I do not know.

Q. Ten? A. More than ten.

Q. Twenty? A. Possibly; I cannot say how many; I do not know.

Q You know what happened when any workmen were brought down from the Cauca Valley, so far as they were arrested by the Government and charged with being revolutionists? A. I did hear of that, but I know nothing of it.

Q. What did you hear?

Objected to by Mr. Robertson on the ground that he knows nothing. Sustained by the Chairman.

The Chairman suggested that it would save time if the pay-rolls were put in in bulk, and then one or two of the pay-rolls should be proved; the Commission would then be able to examine the same, and the proposal was agreed to.

Mr. STINE: Q. Now, Mr. Carter, you stated that the wooden bridge cost about $5,000 in Colombian money, and I believe you have testified that the bridge was partially washed away three times and slightly repaired the fourth time; is that correct? A. No; my recollection is that the bridge was destroyed by the end of October, 1891, entirely, re-built by the end of the year, and was then almost immediately washed away again—within twenty-four hours; then, in July, 1892, it was partially destroyed; that is all I know about it.

Q. Do you want the Commission to understand that the carrying away of the bridge was in this way—three times entirely and once partially—and that the repairs of restoring it cost in the aggregate $5,000 in Colombian money? A. No.

(547) Q. What then? A. I want the Commission to understand that $5,000, gold covers the cost of restoring the San Cipriano bridge twice, repairing it the third time, and also repairing the Sucre bridge.

Q. You have stated, to take this at random, that there were employed on construction during the month of January, 1893, from 150 to 200 men. Will you estimate, if you can, what additional men were employed by the Company during that time, on operation or for any other purpose? A. On surveys about 50 men; train, about 12 men; shop, about 10 men; contract, about 70 to 75 men; and on the construction of the bridge—iron bridge at Sucre—probably about 40 men; that makes 167.

Q. Will you add that to the 150 men? A. 317.

Q. Would it very much surprise you to know that the pay-rolls show the number of men to be 569 instead of 317? A. It is more than I supposed.

Q. Now, as to the month of May, 1894, you stated the number of men employed in these months—that is, March, April, and May—to be 60, and then you go on to state as follows (I am reading from the minutes of July 28): "What would be the minimum number of men so employed in these months? A. About 60 men. Q. Will you state, in or about the month of May, what decrease or increase of men on construction work took place? I mean May, 1894? A. In the month of May they remained stationary, more or less. The men were not materially increased or decreased during the month, as near as I can recollect. Q. I stated in or about the month of May inasmuch as in your last answer you specified the months of March, April and May? A. That is because I can state positively the number of men during the months of March, April and May, 1894. There is no 'about.' I stated the exact number." Well, now, during that time, will you please figure up the exact number employed on other work? A. In reply to that I will say—

(548) Q. I do not ask you why—please answer my question.

(Question repeated.)

A. Will you allow me to refresh my memory by referring to these papers.

Q. Certainly. A. On May 20, 85 men.

Mr. Stine interrupted, and again read the above questions and answers.

A. On March 15, there we 60 men; March 26th, sixty or seventy men; April 23d, 70 or 80 men, and in May a little in excess of 80.

Q. What do you mean, then, by saying that they remain stationary, and that you were positive of the num-

ber? A. Well, I reconcile that; I am warranted in saying that the number remained stationary, because on April 23d the number was 70 to 80, and on May 20 there were about 80.

Q. That is what you call without any "about," when you testify that it was abut 70 or 80 men. A. I said that because my recollection is quite positive on that subject, as I could refresh it from these letters.

Q. I forgot to ask you, in estimating the numbers on the bridge at San Cipriano, whether there was any false work connected with that bridge. A. There was.

Q. How was it put up? A. It was a trestle bridge that was in place when the San Cipriano bridge arrived.

Q. Was it used for the false work without any additions? A. There were additions.

Q. What were they? A. I cannot state.

Q. Did you estimate the existence of those additions when you estimated the cost of the bridge? A. I did not take that into consideration.

Q. That is another point besides the cement that you did not take into consideration? A. The false work was there.

(549) In your estimate, what did you estimate the Sucre bridge at? A. $10,00 gold.

Q. You think that is a liberal estimate? A. I assume it to be a reasonable estimate.

Q. As liberal as your your estimate of the San Cipriano bridge? A. Yes.

Q. Did you forget anything on the Sucre bridge? A. I am not sure if I forgot anything.

Q. You did on the San Cipriano bridge, you know. A. Well, now, I do remember that I did forget something on the Sucre bridge.

Q. Yes; I thoaght you would. What was it? A. I forgot the cement.

Q. What else? A. Rails in the cylinders, if there were any.

Q. What else? Please reflect. A. There might have been some changes in the trestle bridge.

Q. Reflect again; your memory may be refreshed by thinking of this false work. A. I do not recollect anything else.

Q. Can you stase how much a 150-foot span steel bridge, like the Sucre bridge, would have cost to erect here in the United States at the time this bridge was erected? A. I could not.

Q. Do you believe it could have been erected for $5,000 under the circumstances which existed there; I mean, do

you believe that the bridge could be erected for $5,000 in the United States under the circumstances which existed in that year; not only actual erection—I mean the bridge finished and put up for $5,000? A. I think not.

Q. How much do you think it would cost? A. I don't know. I have had no recent experience.

Q. Take your experience at that time. You say you were employed as an engineer in the United States; give us an idea of what you think it would cost in the United States. A. I have no idea on the subject at all.

(550) Q. Can you give the price per lineal foot it would cost in the United States? A. It would not have cost more than $50 a foot.

The CHAIRMAN: Q. What was the type of the truss? A. Whipple truss, with lower cord eye-bars and vertical columns or posts, with tie eye-rods sloping up from the centre towards the ends.

Mr. STINE: Q. So you think it could be put up for $50 a lineal foot in the United States? A. Yes; when I say about, that is of no value, because I do not know.

Q. But that is your assumption; it would cost, then, $8,000 according to your estimate. Assuming that it would cost that under the most favorable circumstance in the United States, what would it cost under the circumstances on the Cauca Railway, considering the climatic coditions, difficulty of transportation, etc., etc. A. What I have estimated it would cost.

Q. You think $2,000 more. Now, if it would cost $8,000 in the United States, what do you think its cost would be in Colombia? A. I do not know.

Q. Would it cost 100 per cent. more? A. I don't know.

Q. What do you think; suppose you reflect a moment? A. I should say it would not cost more than $100 per lineal foot in Colombia.

Q. In your opinion it would not? A. It is for that reason my estimate was about $10,000.

The CHAIRMAN: Q. What was the total weight of the bridge? A. The weight of the bridge, taken from the custom-house, report, was 64 tons, including a few other things.

(551) Mr. STINE: Q. Now, in making up your estimate of the cost of this railway you have stated that the total was $174,000, including the San Cipriano bridge. A. I think that is incorrect.

Q. I am giving you the evidence you stated on the 28th af July last.

After referring to the minutes Mr. Stine asked the witness if he could state the total cost now.

A. I am not sure if I have all the items, but I think it was $212,322.00.

Q. Well, perhaps you said that elsewhere in the minutes; I think that is right. Now, you figured out the total cost of the surveys at $22,000? A. $22,805.

Q. Now, will you state please how many engineers there were on these surveys, how long they were employed, how many peons or assistants they had, and how many parties there were in the field, all told? A. Will you allow me to look at my estimates?

Q. Certainly. A. I find 13 engineers.

Q. Now, these 13 engineers were all men in good standing in that profession? A. Not all of them; some were just beginners.

Q. They were in good standing? A. Not very good; I had a man whose work I had to do myself.

Q. I mean were they respectable and reputable men? A. Yes.

Q. And you say there was one man whose work you had to do? A. Yes.

Q. But, generally speaking, they were men of ability? A. Yes.

Q. Getting good salaries? A. Fairly good.

Q. Did they not get more than they would have got on similar work in this country? A. Yes.

Q. How much more? A. From 75% to 100% probably.

(552) Q. They were paid by the Company? A. They were.

Q. How long were they in the field? A. About 8 or 9 months, I think—some of them.

Q. How many peons were there? A. There were 12 peons in each camp.

Q. How many camps were there? A. For the first year, one camp only; and after May, '92, two camps on the survey.

Q. Never more than two camps at one time? A. At one time there might have been a third camp, which was Dunn's, the engineer on construction; that is an error though, because it was not on survey.

Q. Did not the Company have to pay for instruments for their use? A. Some of them.

Q. What do you mean by some? A. I mean they did not have to pay for all.

Q. But they had to buy most of them, did they not? A. Probably they did.

Q. Now, their camp outfits; did they not have to buy those? A. Yes.

Q. What else; horses? A. Some horses.

Q. Well, what else? A. I do not recollect anything else.

Q. Now, do you think $22,000, gold, is a fair estimate of what the surveys cost? A. I do.

Q. Would you be surprised to learn that the surveys cost over $50,000? A I should be much surprised.

Q. You think it could be carried on for one-half of $22,000 in the United States? A. I do not know about that.

Q. What work do you think could be done for one-half the amount in the United States? A. I can give you no information, or any good answer on that point, because I have no idea.

Q. Now, give us your idea, and let us be the judge of the worth of your opinion. A. I have known survey par-(553) ties in the field, with several teams to move their camp, to cost $1,500 per month, in Western Texas.

Q. With 13 engineers? A. No.

Q. How many were there? A. About 6 engineers.

Q. And they received salaries amounting to about half those received by the engineers for the Cauca Company? A. About.

Q. What salaries were they getting? A. My recollection is that the chief of the party got $166 a month.

Q. And what did the two chiefs of the Cauca Company receive? A. About $250 or $200, I presume.

Q. Now, what did the other men get? I mean the Texas parties? A. Some men got $90 to $100, and others $75 or $80.

Q. Well, now, say, figuring just the salaries alone of these engineers, they got $1,500 in the United States a month, and I assume that the 13 engineers would get $3,000 in gold in Colombia; that would be for seven months, $21,000. A. No; these six men did not get $1,500 per month; I mean that the total cost of the survey was $1,500 a month.

Q. You think it is a fair average? A. Yes; it would even cost more than it would in the east.

Q. Were you on the survey yourself? A. Yes.

Q. Well, what were you getting? A. I was getting $80.00.

Q. What were you at the time? A. I was levelman.

Q. What did you get on the Cauca Company survey? A. $250.00.

Q. Did anyone else get as much as you did? A. I do not know; I do not think so.

Mr. STINE: Well, now, I will close this particular subject, and take it up again to-morrow morning.

(554) It being 3:10 P. M., the chairman adjourned the meeting until the next day at 9:45 A. M.

(Signed.) LEWIS M. HAUPT,
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

Notarial Seal.

HAROLD R. MILLER,
Secretary.

Complainant's Exhibit No. 20.

(555) Filed 17 day of Dec. 1897.

L. B. DELLICKER, Clerk C. C. U. S. D. W. Va.

MINUTE BOOK

of the

COLOMBIA-CAUCA COMPANY ARBITRATION COMMISSION,

Created under the Convention of 4th January, 1897,
Inaugurated April 3rd, 1897, in
New York City.

VOL. II.

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(Copy.)

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C. G. Burgoyne, Walker and Centre Streets, New York.

(557) This is the volume referred to in affidavit of Harold R. Miller attached to Vol. 3 of these minutes dated New York, Nov. 1, 1897.

[N. S.] (Signed.) EMMET R. OLCOTT, N. P.,
New York City.

Eighteenth Session.

Held at No. 30 Broad Street on Wednesday, August 11, 1897, at 9:45 a. m.

Cross-examination of Mr. Carter continued—Re-direct examination of Mr. Carter by the Government.

Present—Commissioners, Attorneys and Counsel as before.

The Chairman called the meeting to order at 9:55 a. m. asking Mr. Carter to take the witness stand that his examination might be continued.

By Mr. CARTER: With permission of the Board I will make an explanation or statement before this examination begins, in reference to my testimony on some particular points.

The CHAIRMAN: We would like to know what it is.

Mr. ROBERTSON: He asked me if, when giving his testimony, a witness had a right at any point to say that he wished to qualify some testimony which he had already given. I informed him that he had such right, and that the proper time to explain it would be at the opening of the session.

The CHAIRMAN: Well, we will hear from Mr. Carter on that subject.

Mr. CARTER: I was asked yesterday in regard to the San Cipriano bridge, if I had not forgotten several items for that, and I said I had; cement, rails, etc. That was probably not a correct statement, for the reason that I had considered those expenditures in the pay-rolls or estimates for excavation, because I had 25 or 30 men employed, I think, for about three months along there, besides a number of mechanics sent from the United States.

(558) The CHAIR: So that as far as you know, you have included in the labor, but not the material?

Mr. CARTER: Yes. Another item is in regard to the day when I returned from the interior, in '92, when I had surveyed to Buenaventura. I said I returned the latter part of November, or early in December. I am pretty well satisfied that I am mistaken on that point, because I remember meeting Mr. Cherry in November on his return, and I am sure it was January before I reached Buenaventura, as I said before.

Mr. ROBERTSON: You fix that somewhat by the holidays?

Mr. CARTER: Yes; I know that I had not spent the Christmas holiday in Buenaventura.

Mr. STINE: When you returned, about the time of

the Christmas holiday, did you pass the camp in which Wilson was? A. Just at the moment, I do not recollect whether or not I did. Probably it would take some little time to recollect.

Q. I will try and help you. Try and see if you cannot recollect some conversation that you had with Wilson at that time, about your anxiety to get to Buenaventura? A. I do not recollect being in any state of anxiety; I am trying to recollect where Wilson had his camp at that time?

Q. At Playalarga? A. I do not recollect it.

Q. In making your estimate of the cost of the bridge and the number of men who were employed on it, did you make any allowance for the fact that the American bridge builders who were sent down there were sick at any time with the fever? A. I did not.

Q. Were they sick part of the time with fever? A. I understand some of them were.

Q. Did you make any allowance in estimating the cost of the surveys for the fact that the engineers were sick part of the time? A. No; but that would have no effect (559) upon my estimate generally, because, knowing the time the men commenced—for instance, if a man worked eight months, if he was sick all the time, I would suppose that he was drawing his salary all the time, and that would appear in my estimate. That would only make my estimate larger.

Q. You do not mean that it would make it larger? A. Yes; it would make it larger than it would be had I considered the sickness of the men, and that they would not draw any pay while sick.

Q. In making your estimate of the cost of construction generally, did you allow for sickness, medical treatment, medicines, and so forth? A. All those items I did not take into consideration.

Q. Were you sick yourself any part of the time? A. Yes.

Q. Very much of the time? A. I think I was sick—that was the reason I went to Cali.

Q. You had the fever? A. Yes; frequently, before and after that time.

Q. Was your pay reduced during the time you had the fever? A. While I was in Cali I did not get any pay.

Q. When you were in the field and not feeling well, was it reduced? A. No.

Q. You have testified yesterday as to the cost of construction and operation, and the cost of bridge building,

and so forth, during December and January, and also January and February, 1893, have you not? A. Yes.

Q. Will you please state what, in your opinion, or based upon your calculations, what the cost of construction was to the Cauca Company during the month of February, 1893? You can refresh your memory by reference to your figures. A. I have no notes upon that just now. My impression is that the cost of construction was not great in the month of February, for most of the men—there was quite a large force of men, but most of them were engaged in repairing the track.

(560) That is not an answer to my question. Try and answer my question. A. I could not estimate the cost of construction.

Q. You could not estimate it at all? A. Not very approximately.

Q. Give it just as approximately as you can. Suppose you take a pencil and paper and figure it out the best way you know how. A. I will say that in the month of February—I will say that as well as I can remember—we had about forty men employed on finishing the Sucre bridge; I will put that expense down at about—

Q. Are you not mistaken about that? Was not the Sucre bridge only commenced in February, 1893? A. No; my impression is that it was finised on Feb. 15, 1893, and there was certainly very little work done on the Sucre bridge after March, 1893.

Q. Just make a calculation yourself, without telling us how you arrive at the amount, telling us what the expenditures were during February, 1893. A. Between nine and ten thousand dollars—construction alone.

Q. You mean nine or ten thousand dollars gold? A. Paper—Colombian paper.

Q. Does that cover everything? A. As near as I can remember, it does.

Q. Now, please specify what the items are. A. I considered about fifty men at $1.40 a day, $70.00; work around the bridge I considered $106.00 a day—Sucre bridge—twenty-four days to the month would be $2,544; I think that is an overestimation for February in regard to the bridge, for my recollection is that the bridge was nearly completed about the 15th of the month of February, '93; $2,544 for labor, which I think is an over-estimation; and on construction work about 200 men, as I have stated 150 or 200 men; I will say 200 men, and I think that is a liberal estimate, as near as I can remember.

Q. What is the total? A. $6,720 for the 200 men

working 24 days a month; $9,265 Colombian money; that is what I figure for labor.

(561) Q. Do you include operating expenses? A. No, because you asked me for construction.

Q. I want you to include operating expenses. A. Do you want me to include surveys and everything in that?

Q. Yes, everything connected with construction and operation. A. (After calculation.) I make a total of $23,045, Colombian money, during the month of February, 1893.

Q. Give us the items, please? A. I put down for construction, $9,260; for Sucre bridge, $1,550; for track, $2,620—

Q. What track? A. Railroad track. Repairs to bridge, $624.00; freight gang, $432.00; train expenses, $552.00; shop, $636; timber, $834; surveys, $4,117.

Q. How much for surveys? A. I have $4,117, and another item of $1,000, I do not know what; I have $1,260 for fuel; $160 for oil, waste, etc., making a total of $23,045, Colombian money.

Q. Will you please foot up your totals there, and put the total under operating expenses, and figure it without specifying it; add up the total for operating expenses. A. I have operating expenses $8,118—operating expenses.

Q. Now add to that whatever you have down for engineering. A. $12,235, operating and engineering expenses.

Q. No; I want you to separate the operating from the engineering. Put it under that. A. I have it under.

Q. How much is it? A. Engineering, 4,117, which is a very rough approximation, paper money.

Q. How much for construction altogether? A. $14,927, including the engineering.

Q. No, just put down the surveying? A. $10,810, construction.

Q. And what have you allowed for the Sucre bridge?

(562) A. $1,550, paper.

Q. Was anything spent in that month on the San Cipriano bridge? A. The San Cipriano bridge was not entirely finished for three or four months afterwards; painting, and so forth.

Q. How much did you estimate the San Cipriano bridge? A. In this just now?

Q. Yes. A. I did not estimate it just now.

Q. I hand you a paper which I ask you to look at, and ask you to state what it purports to be? A. This purports to be Distribution of the officers and laborers' pay-roll of the Cauca Railway Company, and the C. C. & I. Co. for the month of February, 1893.

Q. Do you find an item, San Cipriano Iron Bridge, $761.30? A. That is a small item.

Q. What did you make the amount spent on the Sucre bridge during that month? A. In the rough, $1,550.

Q. I find the amount spent on the Sucre bridge during the month of February, 1892, according to this distribution, paper, $3,127.55. A. Are you sure that that is properly distributed?

Q. I am not being cross examined just now; you are being cross examined. Operating expenses you make how much? A. $8,118—no, I have got a little mixed here. I have got so much on the paper; (after calculation.) $8,118 operating expenses, including maintenance.

Q. I find here that operating expenses are put down at $5,649.95? A. Do you include maintenance in that; that is, repairing track—

Q. What have you got for engineering? A. I have got for surveys—

Q. Engineering I ask?

THE CHAIRMAN: We take those words as synonymous here.

(563) A. $4,117, I have for surveys. To get that I just averaged up the amount—

Q. I find that it is $3,374, according to this paper. What have you got for construction? A. I have $9,260; hold on a minute—let me see. I have $14,927.

Q. What was the last amount that you had for construction? A. The only amounts that I have for construction are grading and the bridge work. I have for construction $10,810.

Q. I find the item of construction here $3,374.20; what is your total for all these items? A. $23,045, everything.

Q. I find the total here $14,866.10. so that there is a wide discrepancy between your estimate and the estimate on this paper, showing the distribution and so on.

The WITNESS: Will you let me see that paper?

Mr. STINE: Yes; take it and look at it to your heart's content.

Q. Now, Mr. Carter, in testifying yesterday you stated, did you not, that you returned from your long survey some time toward the end of November? A. Or in December.

Q. Was that yesterday or to-day that you said that? A. Yesterday and the day before. Now, I am quite sure that it must have been after Christmas.

Q. You are not sure that it was not in December? A. Yes, I think it was in January. I think it was.

Q. You think it was? A. Yes, I am quite sure it was in January.

Q. So that you were gone on your survey longer than you at first thought? A. Yes.

Q. How long all told? A. About 9 months on the survey; in my estimate for cost of surveys, I put down 9 months.

Q. So that yesterday when you calculated seven months, it was not correct? A. In my estimate for surveys I have taken nine months.

(564) Q. Now, Mr. Carter, you stated in answer to a question: "Now, what do you mean by saying that you have been liberal rather than otherwise; please explain it to the Commission? A. I mean that I estimated, that I have taken rather more than the actual cost, than I approximated it, than less.

Q. Can you illustrate it by referring to any particular instances where you have followed this principle of liberality? A. I can, yes; for instance take the item of clearing from K. 29.750 to San Jose, which is K. 6.920; I estimate for clearing $500 Colombian money per kilometer. I have no knowledge that the Company ever paid as much as half of that for clearing.

Q. Now, will you state what kind of clearing this was for which you estimated $500, although you have not any knowledge whether the Company paid half as much as that; was it clearing of heavy timber? A. No heavy timber along there.

Q. Was it not going through a banana patch? A. For how many kilometers?

Q. From 29.750 to San Jose? A. No, there is no banana patch that long.

Q. Did not most of it run through a banana patch? A. A very small percentage of it.

Q. Did any of it beyond San Jose run through a banana patch? A. Yes, just within a kilometer of San Jose there is a banana patch, and the road passed through it.

Q. How much of these six kalometers beyond San Jose, that you have testified only cost $250 a kilometer, going through the banana patch? A. Without stopping to think long about it, I would say not over half a kilometer, maybe a quarter of a kilometer; the rest was not heavy timber.

Q. Was it much lighter work than the clearing which had been done before you got to San Jose? A. West of San Jose?

Q. Yes. A. No; I could not say it was.

Q. You do not think it was lighter? A. Some places it might have been.

(565) Q. I mean, generally speaking, was the clearing beyond San Jose, which this Company had to do, lighter on an average, or not, than it had to do west of San Jose? A. That I am not prepared to say; possibly it might have been a little lighter.

Q. Do you want this Commission to understand that the average cost of clearing timber along the line of that road, in order to make way for the track, was not more than $200 a kilometer? A. I do not want the Commission to understand anything more than they can reasonably understand or interpret from what I say.

Q. Please answer my question; if the form of the question is not satisfactory, your counsel will interfere, and see that it is; he will protect you; please answer my question.

Mr. ROBERTSON: Please read the question and answer.

Question and answer read.

Mr. ROBERTSON: That is an answer to that question.

Mr. STINE: My question calls for an answer as to whether or not the average cost of clearing was $200 a kilometer, or more; that is what I want to know.

Q. Was the answer you gave that the clearing cost $200 a kilometer to be taken to mean that the average cost of clearing on that road was $200? A. I consider it the average cost of clearing.

Q. Did not that depend on whether the clearing was to be done in heavy trees, or banana trees or shrubbery; would it not depend on that a great deal? A. Very much.

Q. It would vary accordingly? A. It would.

Q. You mean $200 in Colombian money? A. Yes.

Q You think that would clear a kilometer in the tropics, on the average? A. Yes; I will not say clear a kilometer on the average in the tropics—

(566) Q. Clear it on this road? A. Yes; on that road, if I recollect; I may be wrong.

Q. Another one of your liberal classifications is that of 30,000 cubic yards as conglomerate, or cemented gravel, out of a total of 73,000 cubic yards You still stick to that classification of conglomerate as having been a liberal statement? A. Yes; upon further consideration—I have not given the matter much further consideration—my opinion on that matter has not been changed at all.

Q. You modified it yesterday, by stating that part of the work was loose rock—part of the yardage to be moved was loose rock? A. It was.

Q. You do not say a very considerable part of it was loose rock? A. Yes.

Q. How much? A. I do not recollect the percentage, but in that particular piece of work about 23,600 cubic yards out of the 73,500.

Q. Of loose rock? A. Yes; that is about one-third in the rough.

Q. So that when you said you had classified it as 30,000 cubic yards of conglomerate and 23,000 cubic yards of loose rock, that left only about 20,000 cubic yards of earth? A. Yes.

Q. So that there was not really one-third of conglomerate and two-thirds of earth, but one-third of conglomerate—a little over one-third—about one-third of loose rock, and about 20,000 yards of earth; is that correct? A. Yes.

Q. And you stated it cost $2.20 per cubic yard to move the conglomerate, did you not? A. Yes.

Q. Is that Colombian money? A. Yes, Colombian money.

Q. Now, what is the nature of this conglomerate? A. A hard cemented gravel, not all of the same degree of hardness; some of it could be moved with a pick, but most of it required blasting.

(567) Q. Was it gravel which is held in a matrix of cement? A. Yes.

Q. When partly moved, and rains falls on it, what happens? A. Rain made no impression on it.

Q. Did not make it sticky and hard to move again? A. Never became sticky.

Q. Did it not become more cohesive? A. I do not think now that it did.

Q. Anything so hard as that you do not think could be affected by the rain; you say there were different grades of conglomerate; some of it could be moved with a pick—

The CHAIRMAN: Q. Have you ever tried to move any of it yourself when in that condition; in its wet condition?

(The WITNESS:) No, I never have; I have stood by and seen it moved when it was wet, but never moved any of it myself.

Mr. STINE: Q. What do you think it would cost per kilometer to remove that class of conglomerate in the United States? A. I do not know.

Q. You do not know? A. I do not know.

Q. You have been in surveys in the United States, have you not? A. Yes, but I do not remember having anything to do with like work in the United States?

Q. Were you never on construction in the United States? A. Yes, I was.

Q. Where? A. In Kansas a short while—

Q. Was there no rock there? A. Not where I was; no rock on the particular section I had charge of. I was on construction over in the Rio Grande valley, on the El Paso; there it was more like ashes.

(568) Q. Suppose it cost in the United States $1 in gold to remove this conglomerate, would you please estimate what it would cost in Colombia on the Cauca road? A. I do not know. From the cost here in gold I could not calculate, or form any idea, what it would cost in Colombian money?

Q. I am asking you to assume that it would cost a dollar here; then compare that unit with whatever it would cost in Colombia. A. If labor is a dollar a day here, and it cost a dollar a yard to move rock, the same way in Colombia: if the laborer gets a dollar a day in paper money, he should receive a dollar a yard for moving the same class of material there.

Q. So that you think that $2.20 a cubic yard for moving this conglomerate is a very high price, assuming that it would cost only $1 to do it in this country? A. If I did not see the conglomerate, I would consider it a high price; but I have seen it being taken out, and know what it is.

Q. Would you be very much surprised to hear that some of the engineers who were on that construction considered that it would be cheap if they could move that conglomerate at four or five dollars a cubic yard? A. Yes, I would be surprised—

Q. But it would not affect your opinion in the least? A. No, it would not affect my opinion.

Q. Now, you think there might be a dispute between your opinion and that of another engineer, and you would consider yours right? A. Yes.

Q. The Chair would like to get on the record here something in regard to the capability of labor in that country. Mr. Carter, will you please state for the benefit of the Commission what the usual day's labor is, or the amount of material which a laborer in Colombia will remove in a day and the cost per cubic yard? A. It depends. It is really hard for me to say—a very hard question—because (569) there are different conditions under which a man may work. A man may be working by contract—that is, getting so many cents per cubic yard for it; then I have seen them get up in the morning and work by moonlight; then, they might move ten or fifteen yards a day; then I

have seen men working by the day who would not do half as much.

The CHAIRMAN: Q. You have given us the number of men employed, also the quantity removed; what we want now is an estimate of how much each man would move per day of the different classes and the price of the labor per day. A. A man working in earthwork would move three or four yards a day at 40c. a yard—that is the average; for loose rock, which has to be loosened a little with a pick, might move a yard and a half or two yards a day at 80c. a yard, and conglomerate—

Mr. STINE: 80c. Colombian money; A. Yes, of conglomerate, a man would not move more than ⅔ or ¾ of a yard a day at $2.20 per yard.

Q. In making up your estimates of expenditures on this road, of all kinds, did you make any allowance for the general expenses of the New York office? A. No; I excluded the expenditures of the New York office by instruction from Mr. Cisneros.

Q. Do you know anything about that? A. Nothing but what I saw in your claim.

Q. What did you make the total amount of receipts of this road for the six years? A. $234,162.07.

Q. Is that gold? A. That is gold.

Q. Well, now, the Railroad Company admits that its receipts were $288,000,* that would be a difference of fifty-three or fifty-four thousand dollars, would it not; you make (570) it $234,162, and the plaintiff admits that its receipts were $288,000? A. $54,000 difference.

Q. So that your estimate of the receipts would be inaccurate, would it not, to the extent of at least $54,000? A. Yes, they would be inaccurate.

Mr. ROBERTSON: That is, if your figures are correct.

Mr. STINE: We admit that they are correct.

Mr. ROBERTSON: What does that amount to—I shall object to the form of your question.

Mr. STINE: Why, I put the question, assuming that that is correct, our figures--that is the way I put it.

The WITNESS: If you will allow me to say that in this estimate I have taken exchange at 133⅓% premium, and figure it up equivalent in gold to $234,000; I take that just as a rough average for the period of the six years.

Q. How do you know what rate we figure at? A. I do not know; it is not very probable that I could fix on the

* Subsequently corrected by Mr. C. F. Schramme to $248,000 (see page 481).

same figures, as exchange differed from day to day, which would very materially alter the total of $234,000.

Q. Now, Mr. Carter, how many years have you been engaged in engineering work? A. I have not been engaged in it continuously.

Q. You have not? A. No, not continuously.

Q. I do not ask you whether you have been engagad in engineering work continuously; I ask you how many years you have been engaged in engineering? A. About 18 years, I think; fifteen or eighteen years.

Q. And where did you study Civil Engineering? A. At the Virginia Military Institute.

Q. You have been engaged in the tropics for a long time? A. Yes, a considerable time.

(571) Q. What other roads have you been on besides this one? A. The Baltimore and Ohio—

Q. No, I mean in the tropics? A. On the Ferro-carril del Norte of Guatemala, the Interoceanic, Gould & Degress Concession, on the Mexican Central, from Tampico, on the Gulf, to San Luis Potosi, and as engineer for the North and South Amenican Construction Co. for about 18 months or two years in Chili. That is all I can recollect.

Q. How long were you in Colombia, all told? A. You mean in the service of the Company?

Q. Yes. A. From the time I entered their employ until I left, four years and two months.

Q. You were there when you were not working for the Company? A. I was.

Q. Were you in private business there for yourself? A. I was.

Q. What was it; cattle trading, horses— A. Yes.

A. You gave that up? A. Yes.

Q. And during the time you were in Colombia you had occasion, both as an engineer and as a resident of the country, to judge of the manner in which the Colombian Government, for whom you are appearing as a witness in this case, carried on its affairs? A. No, I had no opportunity for knowing; never held any office under the Govrrnment.

Q. I mean in connection with the railway; what I am trying to get at is when the Government of Colombia had an engineering project before it, it was in the habit of employing engineers—men like Mr. Cisneros—to give their opinion upon it? A. I cannot answer that question.

Mr. CISNEROS: I object to that—

Mr. ROBERTSON: I object to that because that is original testimony which they are drawing out—not cross ex-

amination—and it has no bearing on any of the issues before the Commission.

Mr. STINE: If you will wait until I get through, you (572) will see that it has a very considerable bearing; however, I will leave it until Mr. Cisneros goes on the stand.

The CHAIRMAN: The objection is sustained.

Mr. STINE: Q. Where were you at the end of last year; about December? A. I was at my home, in Virginia.

Q. Did you have any communication, by letter or otherwise, with Mr. Cisneros or any other representative of the Colombian Government at that time? A. I had no communication with Mr. Cisnoros.

Q. Or any other representative of the Government? A. I had with other representatives.

Q. With whom? A. Mr. Rengifo, at Washington.

Q. You saw Mr. Rengifo? A. Yes, I saw him.

Q. Did you agree then to testify for the Colombian Government in this proceeding? A. Possibly I did.

Q. Did you make a bargain with him as to what you were to receive for doing so? A. No bargain was made.

Q. You say no bargain was made? A. No bargain was made, but the matter was discussed.

Q. Was a bargain subsequently made between you and any one representing the Government? A. There was; Mr. Cisneros was the representative of the Government with whom I made the bargain.

Q. What is the nature of it? A. I am paid for my services while testifying for the Government.

Q. At what rate? A. $250 per month.

Q. Are you to have any interest or any payment dependent on the result? A. No.

Q. How long have you been in the employ of the Government under this arrangement? A. Since April 15th.

Q. And your salary shall cease when the sittings of the Commission shall cease? A. When he has no further need for my services.

(573) Q. Have your expenses been paid in addition to your services? A. They have not; I have paid my own expenses.

Mr. STINE: I will say this: I have not the minutes of the cross-examination yet, and it may be, after I have looked them over, I shall want to ask this witness some more questions.

Mr. ROBERTSON: We certainly will have no objection to that.

RE-DIRECT EXAMINATION BY MR. ROBERTSON.

Q. How long have you had experience in railroad surveying and construction in Spanish-speaking countries? A. 10 or 12 years.

At this point Mr. Stine requested permission to ask the witness some additional questions.

RE-CROSS EXAMINATION BY MR. STINE.

Q. Now, have you made a balance of accounts up to, say, the 31st of January, 1893, of this Company? A. I made no balance; nothing further than this.

Q. What do you make the total expenditures, of all kinds, in Colombian money? A. What I have enumerated already.

Q. State it again, please? A. Operations?

Q. Yes, and everything. I am speaking now only of the expenditures of the Buenaventura office—has nothing to do with the New York office. A. I have not separated that. I have included salaries that were paid in New York; for instance, I have estimated the cost of surveys at $22,000 and some hundred dollars. I did not take into consideration whether these salaries were paid at Buenaventvra or in New York; they were paid part at Buenaventura and part at New York.

Q. Look at this statement which I give you; you know Mr. Blum and are familiar with his handwriting? A. Yes, quite familiar.

(574) Q. Is that his handwriting? A. Yes; it is a balance of accounts, Jan. 31, 1897.

Q. I find here an item of timber; what do you estimate the timber to have cost? A. Since making this estimate, I have seen something of Mr. Barney's books, from which I have seen, or learned from Mr. Miller, that my estimate for timber is a great deal more than yours. I have timber for bridge repairs $14,618 and ties $18,198.

Q. That would make how much? A. $32,816 gold.

Q. So you would make it $32,816 gold, which, at 100%, would make it about $64,000? A. Yes; I can tell you why that is so high.

Q. I find here an item for timber, $40,962.45, and I understand that this is estimated in Colombian money. Therefore, your estimate for timber and our statement vary very radically? A. Considerable.

Q. What have you estimated for fuel? A. $9,446 Colombian money. That is correct approximately.

Q. You estimate for fuel, for the six years, $9,446 Colombian money? A. Yes.

Q. I find an item here, fuel, $20,242.30; that is entirely different from yours; is there not a wide discrepancy? A. Yes, a wide discrepancy.

Q. So that, while you estimate one-third more for timber, you estimate 50% less for fuel? A. I will correct that statement or estimate, because I find that I have put fuel here in gold, not in Colombian money; that is $9,446 gold.

Q, Then, is it not about the same; nine thousand and some odd would be about twenty thousand for fuel? A. Yes, at 100% exchange.

Q. What do you allow for general expenses down there, office rent, and so on? A. $50 a month for office rent, gold.

Q; I mean for all general expenses for the six years, (575) give me the total? A Leaving out of consideration the General Manager's salary, I have $16,820 for expenses, gold.

Q. I find here an item $32,360, Colombian money, so that there is a wide discrepancy between them— A. How much is yours?

Q. $32,360, without rent. A. And mine is $16,000 odd, gold; it depends on the rate of exchange; at 100% it would be about the same.

Q. What did you figure the construction at? I find here two items of construction, and one pay-roll; now, under pay-roll, I assume is meant operating and so forth, maintenance, construction. We would like to hear from you first as to what you make construction, and all the pay-rolls. A. I did not consider any pay-rolls. I considered the cost of the whole.

Q. That is the heading; they include maintenance and construction; and here they have been separated, and I would like to know what you make the two? A. I have given you previously what I make construction.

Q. Perhaps if you took them together it would be easier. A. I gave you construction the other day.

Q. I mean in Colombian money; this is all in Colombian money, and I want you to give me your answers in Colombian money, so that we will not have any dispute as to the rate of exchange. A. A difference of two or three per cent. in the rate would make quite a difference in the totals; I have just estimated the cost of the work done—

Q. Then give us your two totals in your own way.

The CHAIRMAN: The chair's impression is that, taking the rate of exchange during these six years, we would have several variations; it gives us 100, 133, 150; now that is entirely too large a limit.

Mr. ROBERTSON: It would be very difficult to give an (576) absolutely accurate calculation unless we have the actual rates at the time.

Mr. STINE: We have our figures according to the actual rates that we paid at the time of the payments.

A. I make the total construction $212,332.14, gold; rolling stock is not added in there.

Q. This paper makes total construction, Colombian money, $758,337.20; now what do you make the pay-rolls? A. That does not include operation, maintenance, or anything of that kind; does not include rolling stock.

Q. No; that is construction; no operation or pay-rolls, as they have it here? A. I make total construction, including rolling stock, $233,909.14, gold; I make total operation, $224,867.54, gold; tatal operation and construction, $458,776.68, gold.

Q. According to this balance sheet, pay-rolls, which means operation and maintenance, is $631,635.89; construction is $758,337.20. What do you make the total? A. I make it, from those figures, $1,389,973.09.

Q. A very wide discrepancy between your estimate and that, even figuring it at 133%; is there not a very wide discrepancy? I will call your attention to the fact that there is a still further discrepancy between these figures and yours, because we have not included the rolling stock. A. Figuring it at 133% exchange, I make $1,146,931.70 as against your figures of $1,589,000 and odd.

Q. Well, there is not so much difference? A. No, not so much.

Q. Now, what do you figure the rolling stock? A. At $21,577, gold.

Q. Translated at 133% would be what? A. $50,346.33.

Q. Now, what do you allow for rent, Mr. Carter? A. $50.00 a month, office at Buenaventura—no, I correct that statement, $100, Colombia money, for the six years.

(577) Q. How much would that amount to for the six years, in Colombian money? A. $3,300 Colombian.

Q. You must be making a mistake there? A. $7,200; that is in gold, rent at Buenaventura, $3,600 gold.

Q. Now, just give it in Colombian; makes it about $7,000 in Colombian? A. Yes, $7,200.

Q. We make it $6,580 here, so there is no great difference; what have you got for medical, as they put it down; I suppose that means hospital and so forth? A. I have allowed nothing for that.

Q. Our balance sheet shows $8,145; then there is an item here, about which you, probably know nothing; that is money burned, $16,731.60; then there is a profit and loss

account, which refers to the burning of the building down there, the offices; have you figured that, the money lost I mean? That is down at $23,322.95, money destroyed in the fire, actual money.

Mr. ROBERTSON: That is Colombian?

Mr STINE: Yes; all Colombian; Mr. Blum testified to that; do you not remember?

Mr. ROBERTSON: You do not expect the Government to make that good, do you?

Mr. STINE: We hope they may, but we do not expect they will.

Q. Do you know anything about the Bono property? A. I have heard of such property.

Q. What is it? A. I do not know anything about it.

Q. Do you know anything as to what the Company expended on it? A. No.

Q. There is an item here of $627.75. I do not suppose you know anything about the item of exchange which is figured here? A. I do not.

Q. Now, let us take the other side of this balance sheet; I find these items: what did you figure the freight at—re-
(578) ceipts of the road? A. $234,000.

Q It is $237,000 here; did you figure at 133%? A. Yes; 133%.

Q. With passenger receipts, it is $25,294, Colombian money, in addition—

Mr. SCHRAMME: The total, figured at 133%, is $248,000.

Q. Now, do you know anything about the draft account which is down here at $276,989.93, or the account of James L Cherry, $265,313? A. I know nothing of them.

Q. Know anything of the account, deposit, $50,000? A. I have heard the deposit was made; I know nothing about it.

Q. You know that refers to the deposit of money before the work was commenced? A. I know that.

Q. Have you not signed drafts yourself, which were drawn on the New York office? A. Possibly; yes; I have.

Q. Then I find here an account, interest on the road; do you know what that means? A. No; I do not know.

Q. That refers to the subsidy? A. I do not know.

The CHAIRMAN: The Commission would like to have that paper.

Mr. ROBERTSON: I enter the same objection to the consideration of this as I did to the consideration of the papers called for yesterday, and that is that I object to the consid-

eration of any accounts or vouchers from the other side that are not proven by some one under oath.

Mr. STINE: This witness has testified that he does know who made it.

Mr. ROBERTSON: That is not good evidence, and you know it; you cannot authenticate it by simply showing who made it up—

The CHAIRMAN: Is there any one who can throw further light as to the accuracy of the account?

(579) Mr. STINE: Yes; who will testify that they came here in the regular course of business, and were received at the New York office from the proper authorities.

RE-DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

Q. During your cross, or re cross, examinations just now closed, you were asked about the cost of timber, or your estimate of the cost of timber, and were proceeding to make an explanation in which you were interrupted by Mr. Stine with the suggestion that you might save your explanation until your re-direct. If you have any explanation which you wish to make about the timber estimate, make it now. A. Now, in regard to the cross-ties on the repairs of that portion of the road from Cordova up to the end of the line 27.100, which was K. 6.860, I considered that all of the cross-ties were changed on that—1,800 per kilometer; I considered that all the cross-ties on that K. 6.860 were changed; that is, on Mr. Cisneros' track; then, in regard to the bridges, although the bridges simply required repairs and being reinforced, I considered that all of that 973 feet on that section had been renewed—new timber substituted. That would cost $15 a lineal foot. And then, in regard to the price of timber for renewing bridges, the repairs to bridges during the six years, I figured the price high; for instance, I put down stringers here right through at $15, stingers 30 feet long, 17 by 14 inches, and I put all the other articles high, and my prices were all in excess of the prices paid, particularly during the latter part of the time.

Q. Now, when you say that you considered that the ties were renewed—entirely renewed over the entire distance mentioned, do you mean that you believe that they had been renewed, or that for the purpose of your calculation you assumed that they had been renewed? A. I assumed that they had been, although I know that they were not all renewed; some ties I should say, remained in that portion of the road for four years after I reached there; it was durable timber.

(580) Q. Now, with respect to the trestle work or bridges to which you have referred, in saying that you had considered that that had been entirely renewed, do you believe it had been renewed; or did you assume, merely for the purpose of calculation, thas it had been renewed? A. I assumed for the purpose of calculation that it had been renewed. I know that it was not all renewed during the first one or two years. Probably by this time all that timber has been changed—changed two or three years previous to this time.

Q. Have you any definite knowledge that it had been renewed within the period to which you have been testifying to?

Mr. STINE: That is the 31st of January, 1897.

A. Positive information I have not, but it is my impression that none of the timber that was in these bridges when I went to Colombia can be found there now.

The CHAIRMAN: Q. What is the usual life of a cross-tie in that country? A. Two and a half years, I would say. That was timber that was on the coast; I have never seen any in the United States. Two and a half years would be the usual life. Then there was another kind of cross-tie which was very durable, known as *Guayacan*, which would last 12 or 14 years.

Mr. ROBERTSON: Q. Amongst the ties used on this road, however, was there any considerable proportion of this durable timber as compared with the other timber that you have now mentioned? A. This durable timber to which I have just referred is extremely scarce; comparatively, there was very little of it used.

(581) The CHAIRMAN: Q. Was the price correspondingly high? A. No, it was not; that is, this good timber could be bought. I have seen ties sold for 50c. paper, and the other timber tie would be sold for 40c. So the price did not correspond to the difference in value.

Mr. ROBERTSON: Q. This *Guayacan* that you speak of is a sort of *lignum vitæ?* A. Yes. *Guayacan* is very scarce, and the Company could not obtain it, if they were disposed to do so, even at any price.

Q. I asked you how many years you had been employed in railroad work in Spanish speaking countries. A. At least nine years—for nine years.

Q. Do you know the meaning of the words "*obras y trabajos*," as used in connection with railroad building, construction and equipment? A. I consider that I do.

Mr. ROBERTSON: I will say that I had not intended to ask Mr. Carter this question, because I had intended more particularly to ask Mr. Cisneros, and possibly one or two

others, but I note that Mr. Carter is familiar with the term, and having him on the stand I will take such knowledge as he has.

Q. Please state the meaning of those words in the connection mentioned? A. In the connection mentioned—in regard to these proceedings—

Q. I say in connection with railroad matters? A. I understand *trabajos* to mean "excavations" and "embankments," and "*obras*," the "structures"; that is, the buildings, bridges, culverts, tunnels, but the entire line of the road might be referred to as as an "*obra*"—the line from Buenventura to Cali.

The CHAIRMAN: The chair would like to ask Mr. Carter for some information when Mr. Robertson has finished.

(582) Mr. ROBERTSON: I would prefer to ask one or two more questions first. I want it to appear that I have attempted to get out all the facts, and that they did not come out as a matter of suggestion after I had omitted them

A. How long have you understood these words to bear the significance which you now give to them? A. That I could not say.

Q. Have you acquired your present understanding of the words during the present trial or by reason of the existing controversy between the Company and the Government here? A. By no means; I have not.

A. Can you say how far back of the—say the first of January, 1897, that you have understood these words to bear the meaning which you now give to them? A. I can state positively that as far back as 1889 I understood the "*obras*" in the same acceptation as I do now, for I used it frequently in Chili, where I was engineer for a contracting railroad company, where I had to deal with the Chilians, and they used that word.

Q. I am talking not only of "*obras*," but also of "*trabajos*"? A. "*Trabajos*" likewise. It was very frequently used in reference to the work I was engaged on in Chili, and previously in Mexico and in Guatemala.

Q. And when these words are used with reference to a line of railroad, what special significance is given to each word? The phrase "*Obras y trabajos*," as I understand it, would mean earthworks and bridges, tunnels, viaducts. The words "*trabajos*" and "*obras*" together would include all the physical structures of the road, including the excavations and embankments.

Q. Go on and give us the signification that each word has when the two words are used together? A. When the two words are used together, the "*trabajos*" rather refers to the earthworks, excavations, embankments, and might

(583) also refer to the work of excavation in a tunnel, while all the lining and arching and so forth are rather "*obras.*"

Q. Then is this the general significance; as I understand it, the word "*trabajos*" refers to the physical work done in the earth—the work in the earth—which would include filling, excavating, tunneling and kindred work, while the word "*obras*" refers more particularly to the superstructure. Is that what you mean to tay? A. Not precisely.

Q. Then please state more specifically what you do mean? A. I would state that, for instance, the foundation work for a culvert or bridge, which is in the ground, that would be part of the "*obras*," while the excavation for the foundation of the bridge or culvert would be considered probably as "*trabajos;*" I would so consider it.

Q. The foundation for the culvert is really a superstructure? A. I would not call it a superstructure.

Q. By a superstructure is meant anything that is constructed on the earth.

The CHAIRMAN: The distinction that you make is that all structural work is included under one term, and all preparation for that work under the other term. The substance of your idea is then, that all structural work, whether of stone, wood or iron, is included under the term "*obras*," and all work in the earth, in preparation of the bed for the structure, of any kind, would be included under the term "*trabajos*"?

A. Precisely. By "*obras*" I mean structural work, and "*trabajos*" refers to the preparation of the embankment of excavation generaliy, and I proceed to say that if I say, referring to the work "*los trabajos,*" if I do not put in that the word "*obras,*" the word "*obras*" would (584) be included in the expression; for instance, if I say "*voy a ver los trabajos,*" I am going to see the works; I use the sentence: I am going to see, or inspect, the works; I might be understood very fairly and properly that I was going to visit, not only the excavations and embankments, but also the works generally.

Q. Is this, then, your understanding, that either the word "*obras*" or the word "*trabajos*" may be used to designate a completed work, but that when you are referring to a railroad construction on a particular railroad, and refer to the "*obras y trabajos,*" the words then have a separate meaning each, which meaning you have already testified to? A. Yes; together they have a separate meaning; together they refer, one, in my opinion, to the earthworks and the other to the structures, bridges, etc., and the

word "*trabajos*" used alone would include the earthworks and the other works also.

Mr. SCHRAMME: Q. And if the word "*obras*" alone were used, then, what would it mean, speaking of a railroad? A. If I were to say, for instance, speaking of the Cauca Railroad, as I saw it in Colombia—

Mr. SCHRAMME: Q. What would it mean if you were to say "*las obras*"? A. It would refer to the railroad in its entirety as a work, just as we speak of the work of the Panama Canal.

The CHAIRMAN: Q. Then, according to the definition that you have given to the Commission, your idea is that this phrase is limited purely and solely to physical work? A. Yes.

(585) The CHAIRMAN: Q. How would you express the idea in case of an indemnity if the mental labor on that work were to be compensated for; how, would you express it so as to include the mental labor required to develop or conduct such work as that upon a railroad; I mean the mental labor required to conduct such work? A. *Una indemnizacion para todos los trabajos o' mas bien todos los gastos de cualquier clase que se hayan hecho;* that is, an indemnity for all expenses of whatever description they may be.

Mr. ROBERTSON: If you don't want this witness to be posted let him step outside, but I can see that the Chairman's question is not clear to him. Does the Chair mean by mental labor the engineering work?

The CHAIRMAN: My question includes that; all the mental labor.

Mr. ROBERTSON: That is a pretty broad term. You know that there is just as much labor required, in its own way, to foot up a column of figures in an office as to foot them up from an engineer's field-book, and I want to know if the mental labor referred to is from an engineering standpoint, or the labor performed in the office in making calculations. If the Chair means all the mental labor connected with the entire enterprise, so far as it is necessary to have that mental labor performed, that may be one thing; on the other hand, if the Chair means that mental labor performed by engineers and surveyors—

The CHAIRMAN: Q I will clear that up. The witness has just stated that he defines those terms necessarily to mean only physical work. The Chair wants to know whether it does not also include the mental work which is (586) necessary to do that physical work? A. I reply, "Yes," I did not so express myself, but now I say "Yes."

Q. You understand it to conclude the mental efforts necessary to the conduct of the physical work? A. Yes, I would include that.

Q. The Chair would like to ask the witness for the definition of the English word "work," as you understand it, on a railroad—work done? A. Work done; work and labor are very synonymous, according to my understanding of the meaning of the words. Referring to a house that is completed, I would say, the work has been done—the work of building the house; work, I would say, means labor, effort, both mental and physical.

Q. Would you include the architects' mental exercises in designing and planning the house? A. I would.

Q. And in paying for that house you would say he was paid for his work. In your judgment, is it proper to include mental labor as part of works done and for which compensation should be awarded? A. It is.

Q. As a general thing, is mental labor worth more than physical labor? A. Yes, worth more.

Q. Would you consider it a correct interpretation of the word "*empresa*" to translate it as works done? A. No.

Q. And if so translated you would consider that an error? A. Yes; it means "enterprise;" that is my understanding; it also means the Company; for instance, the Cauca Railroad Company is frequently referred to along the line of the road as "*la empresa;*" it also means "enterprise."

Q. Now, will you give the Commission your revised definition of the phrase "*obras y trabajos,*" including everything that you think ought to be included in the general use of that term as applied to such work as we have under consideration—the subject matter of this arbitration? A. My answer to that question is that by the words "*obras y trabajos,*" used with reference to a railroad I (587) will include the physical work and the mental administration; I will include the physical labor and the mental labor, also, necessary to the conducting of that particular physical work—for conducting it.

Q. Then your first definition was not sufficiently broad? A. No; when I stated "*voy a ver los trabajos,*" "I am going to see the works," I had in my mind that that meant the physical works—the excavations, bridges, and so forth.

Q. The mental works you could not view? A. The mental works I could not view. When I gave that definition I did not have the full meaning of the words in my

mind. When I used that expression I had no reference to the administration—to the conducting of the enterprise.

Mr. ROBERTSON: Q. Did the chairman, in referring to the mental work, refer to something that is broader than the work referred to in the construction of a railroad by the words "*obras y trabajos*," as they are used technically, to your knowledge, in Colombia, as you have testified in answering my former question? A. I understood that the chair referred to the physical work and the mental labor necessary for the performing of the physical work.

Q. Did you understand that the chair had reference to anything like the office expenses in this city, the office expenses in New York city or anywhere in the constructing of the road at Colombia, clerk hire, book-keeper, salary of the President or other officers, or did you understand that he had more particular reference to the work of engineers in laying out and surveying the line—the mental work necessary for the supervision of the construction of the line? A. I rather take it that his questions referred more particularly to the administration on the work performed.

Q. Administration is a broad term. I ask you whether (588) you understood him to refer to the engineering mental work, the mental work of the supervision of the construction of the road, as distinct from clerk hire in the home office, the salary of the President and others? A. I understood that the chair had in mind the hire of a clerk in New York, if necessary, for the carrying on of that work; but as for the President's salary, and so forth, I did not think of that.

Q. What do you mean by that? A. I mean the work being conducted in Colombia; if necessary for the transaction of that work to make purchases in New York and transact business, I would understand that clerk hire was to be included in the work to be paid for.

Q. Then was there to be an indemnity for all mental work as the Chairman put the question to you? A. If there was to be an indemnity—

Q. That is to say, you would so understaed it, if there was to be an indemnity for all mental work?

Mr. STINE: He has stated that he does understand those terms to be an indemnity for mental work.

A. I understand that if there was to be an indemnity for all mental work, it would necessarily include the work of a clerk.

Q. Now, suppose, however, that there was to be a mere indemnity for the "*obras y trabajos*" included in the road as constructed, what would the indemnity cover then, in your opinion? A. It would then cover the value of those "*obras y trabajos.*"

Q. What would constitute the "*obras y trabajos*" then—the physical matters which you testified to in answer to my questions before? A. In the value of any object at all, there is both mental—it represents both mental and physical labor; for instance, that sheet of paper: it represents the cost of both mental and physical labor.

Q. Do you mean to say that when you buy a sheet of (589) paper that you purchase the mental labor and pay the value of that specially, or do you purchase the sheet as it is? A. As it is.

Q. If a man offers you a sheet of paper, does he offer you the mental labor or something physical? A. Something physical.

Q. In going to inspect a railroad and to look at what you have termed the "*obras y trabajos*," do you understand that you are going to look at something mental or physical? A. Physical.

Q. And you do not understand that you are going to look at something that is mental in any sense? A. No.

Q. If you were asked to buy a railroad and were told to pay for the railroad including all its "*obras y trabajos*," would you understand that you were requested to buy something physical, as a railroad, or pay for something that you could not see? A. Something physical.

Q. And if you were asked to go to South America and value the "*obras y trobajos*," constituting the Colombian railroad, would you go there to value something physical? A. I would.

Q. And you would not go to South America to value something that took place up in the New York office? A. No.

Q. And you would not have in your mind at the time anything except the mental operation of valuing the physical structure or work referred to by the term "*obras y trabajos*?" A. The mental work would not be considered at all.

Q. And if this Commission has been requested to indemnify, or pay for, the "*obras y trabajos*" constituting the road in the Cauca, would that be paying for the road, or something else? A. For the road.

The CHAIRMAN: Q. Mr. Carter, please define the word "indemnity?" A. It means "compensation."

Q. Can you give us any other definition? A. That is not a complete equivalent of the word "indemnify;" it (590) means something more than "compensate."

Q. Does the word mean to save harmless, or to give an equivalent for? A. Yes, I think it does.

Q. You have just testified that if you went down there to buy the road, you would have to pay for the physical

work done; in other words, you would pay for the cost of the road? A. I might get it for a good deal less than the cost, if I went down there to buy it.

Q. If you were going to pay a party for building the road, you would desire to pay the cost of the road—for the work done? A. If I wanted to indemnify the party for building the road, and if it cost a particular sum to build it, probably I would.

Q. And then under the term "*obras y trabajos*," you would include the mental labor necessary to put that road in that physical condition, would you not? A. In calculating the cost, if I went into that to indemnify them, I would not consider the mental labor; I would want to know what has it cost you—so much; I would not consider particularly mental labor.

Q. Then you would consider it an indemnity in case you paid for the physical labor, for the material and the putting of it in place and would not include any mental labor? A. No; that is not it either, but I would not give particular attention to the mental labor expended in the building of the road; to the mental labor, if I want to pay, to indemnity for the cost of the road, and it was understood that I was to pay all costs of every description—

Q. Now, take the road just as it stands? A. Then I would pay for not only the manual labor, but the mental labor also, if I paid for all the labor expended.

Q. Then, in making up your estimate of the cost of the road on the ground, you would include the mental labor necessary to bring about that result, provided mental labor had cost—provided an expenditure had been made (591) for mental labor, for which compensation had not been made?

Mr. ROBERTSON: Q. Suppose you were to indemnify somebody for a generol act that had been done by paying them the actual cost, of a railroad, say, as shown in its "*obras y trabajos*," as they appear in the railroad, would you then pay for the mental work not done on the road itself? A. I should not.

It being 1:25 p. m., the meeting adjourned until 9:45 to-morrow morning.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Nineteenth Session.

(592) Held at No. 30, Broad Street, on Thursday, August 12, 1897, at 9 · 45 a. m.

Re-direct examination of Mr. Carter continued—Fremont Wilson called and sworn on behalf of the Company—Cross examination of Mr. Wilson by the Government.

Present—Commissioners, Attorney and Counsel as before.

The chairman called the meeting to order at 9 : 55 a. m.

RE-DIRECT EXAMINATION OF MR. CARTER CONTINUED BY MR. ROBERTSON.

Q. It appears by the evidence in the case, Mr. Carter, that there were rails of different classes or weights on the Cauca Railway; do you know how that happened? A. There were rails of different classes or weights, and I do know how that happened.

Q. Please state how. A. The rails on the Cauca Railway in '91 weighed, I believe, about thirty pounds—30 to 35 pounds. The Cauca Company purchased, in '91, rails in Europe which, I believe, weighed 40 pounds, and also, afterwards, made another purchase of a heavier rail, which, I think, weighed 52 pounds. This latter lot of rails—52 pounds to the yard—were purchased in South America. I think; probably in Ecuador.

Q. Were they rails that had been sent there for other uses—sent to Ecuador for other uses than the construction (593) or repairing of the Cauca Railway? A. They were not sent to Ecuador for the use of the Cauca Railroad; they were brought from Ecuador for the use of the Cauca Railroad.

Q. You know how they came to be bought in Ecuador? A. Positively I do not; I cannot say that I do.

Q. Have you any information derived from any of the Cauca Company officers on that point? A. I have heard—now, I do not know from whom—that the rails were bought—

MR. STINE: I might object to that when the witness says he has heard—he does not know from whom.

MR. ROBERTSON: I will not object to your striking it out if it hurts you and is not good evidence.

MR. STINE: Go ahead; let the answer go in.

A. I have heard, and I believe from officers of the Company, that the rails were purchased first for a road

which was to be built in Ecuador, and that they were purchased by the Cauca Company for the reason that the enterprise in which they were intended to be used had fallen through; the rails had been laying there for some time, and had been of no use to that Company, or to those who claimed to be the owners of the rails, and they were offered for sale to the Cauca Company, I suppose, and purchased.

Q. Have you any information as to the price paid for them, whether it was the market price for rails of that kind? A. I do not know the price.

Q. You have testified, I think, that there were rails on hand when the Government turned over the road to the Cauca Company? A. There were.

Q. Do you remember the quantity? A. I remember—I think the quantity was stated in the inventory delivered to the Cauca Company, which was 267 tons, if I am correct, according to the inventory.

(594) Q. Now, how many tons does it appear that the Company imported for use on that road? A. As near as I can remember, they imported about 600 tons from Europe, 40-pound rails, and about 120 tons, more or less, 52-pound rails, which have just been referred to.

Q. I think it appears in the inventory, or in the evidence, that the quantity of rails imported was 760 tons, does it not? A. The quantity of rails purchased by the Cauca Company—

Mr. CISNEROS: Q. Imported, altogether? You have stated now 600 tons imported from Europe and 120 tons; was not the whole quantity imported by the Cauca Company 760 tons? A. Not if I am correct in saying about 600 tons from Europe and about 120 tons from Ecuador; that would be about 720 tons, more or less.

Q. Are you sure of that? A. I am quite sure of that.

Mr. SCHRAMNE: The importations from Europe were 638 tons, and 122 from Ecuador.

Mr. STIE: Refresh your memory, and see exactly what it is.

A. I find this document, which purports to be a letter to the Colombian Consul in New York from the Custom House Collector in Buenaventura, dated April 7, 1897, in which he reported as follows: "Mr. Cliamaco Calderon, Consul of Colombia, New York: In reply to your cablegram of this date, I communicate to you the following details you asked for in same. Mr. Cherry has made the *follow* importations of rails, locomotives and bridges for the Cauca railway, viz.: Per steamer 'Manavi,' on June 1,

1891, 200 steel rails, weighing—" (it is here 3,529 kilos, which is a clerical error; 200 steel rails would weigh a great deal more than 3,520 kilos; it must be meant for 35,200 kilos) "per steamer 'Manavi' on August 14, (595) 1391—150 iron rails, weighing 53,360 pounds; 156 iron rails, weighing 25,619 pounds; per steamer 'Manavi,' on August 26, 1891, 22 packages consisting of one locomotive, weighing 41,589 kilos; per 'Velero Oriente,' on October 28, 1891, 3,412 steel rails weighing 609,615 kilos; per steamer 'Quito,' on August 23, 1892, 205 pieces consisting of a bridge for San Cipriano, weighing 82,800 kilos; per steamer 'Quito,' on October 28, 1892, 203 packages containing the iron bridge for Sucre, weighing 63,879 kilos; per steamer 'Chala,' on August 11, 1894, one locomotive weighing 27,482 kilos (Signed) Jacinto Luna." Then "Consulate General of Colombia, New York, April 27, 1897. I, the undersigned Consul General of Colombia, do hereby certify that the above signature of Senor Jacinto Luna, Collector of Buenaventura, Colombia, is genuine, and that said person filled the aforesaid post on the 7th inst. In witness whereof, I issue the present under my hand and the seal of the Consulate. (Signed) Climaco Calderon, Consul General of Colombia." By the "Velero Oriente," which means the sailing vessel "Oriente," on the 28th of October, 3,412 steel rails, weighing 609,615 kilos; taking 1,000 to a ton, that would be 609 tons; 1,000 is very approximately a long ton; in that way I get at my estimate 609 6-10 tons of 40-pound rails, which does not agree with the quantity stated by the Company.

Mr. CISNEROS: Q. How much do you say there? A. Of 40-pound rails, 609 tons; 609,615 kilos, and 1,000 kilos is about a ton.

Mr. ROBERTSON: Q. Can you state how this 720 tons of rails in the aggregate were used as between construction and repair work, and what, if any, if this quantity remains now on hand? A. I have data for answering that question (596) very approximately.

Q. Please give the Commission the benefit of it. A. From K. 30.800 to K. 36.740, which is a distance of K. 5.940, the siding at San Jose, as near as I can remember, 118 meters, making a total of K. 6.058, which was laid with 40-pound rails; saying about 39 tons per kilometer—that would be 236¼ tons—were employed on construction between Caballete and San Jose.

The CHAIRMAN: Q. That is only for the rails, not for spikes and such other items? A. I have added for fastening, fish plates and so forth 7%, which I believe is not sufficient. The bolts, spikes, fish plates and so forth would

probably be more than 7%; it would depend altogether on the class of fish plates; these fish plates were very light, I believe.

Q. Do you know the weight of the spikes used? A. Well, if I saw a lot of spikes, I could pick out the ones that we used on the road; they were probably five or six inches long; just such as are used on rails in the south and west, where 40-pound rails are used. They are not as heavy as are used by the New York Central and the roads around here.

Mr. ROBERTSON: Q. What was that—283 tons? A. No, 236¼ tons of rails.

Q. Go on and say whether this is all—the entire amount of rails used on construction; is that the truth? A. This quantity, 236¼ tons of rails, is the total of that description of rails that were used on construction, to the best of my knowledge on construction.

Q. You seem to qualify that; I don't mean of any one particular class— A. I withdraw my qualification, and say that is the quantity of rails that was used on construction.

(597) Q. Of any and all descriptions? A. Of 40-pound rails.

Q. I am asking you now to give us the total quantities—of rails used in construction; whether 40-pound or any other weight? A. Referring to the same paper from which I have just read, I find that from K. 27.100 to kilometer 29.750, a distance of K. 2.650, the weight of the rail employed was 35 pounds per yard, requiring about 34 1-10 tons per kilometer; total quantity employed on that section, 90 tons and a fraction—90.365 tons.

Q. Please state the total amount of rails of all descriptions used in construction work, and then state how many pounds were of one weight and how many of the other; I mean how much went into permanent construction? A. I read further from this same paper before I answer that question, because I have answered how many rails were used on the section from 38.000 to 36.740; I have stated 236¼ tons.

Q. We can shorten that if you will simply make the calculation and state it; my purpose is to help the Commission so that it will not have to make additions and substraction; so that, when they come to these figures, it will be final. A. I find the total weight of the rails used 362 tons —362 and a fraction—on construction.

A. Now, how was that divided as between rails of one weight and those of another weight? A. About 90¼ tons of the 35-pounds rails—no, 126 tons of the 35-pound rails

and 236¼ tons of the 40-pound rails used on construction.

Q. What is the total? A. Neglecting small fractions, 362½ tons total weight of rails used on construction from K. 27.100 to San Jose.

Q. Were all the rails used on permanent construction imported rails, or were some of them those which were turned over by the Goverument to the Company? A. All of them were not imported rails; some of them were those turned over by the Government to the Company.

(598) Q. Can you give the proportion of those imported, and those which were turned over by the Government to the Company? A. I can.

Q. How many of each? A. 236¼ tons imported rails, and 126 tons and a fraction of the rails that were turned over to the Cauca Company by the Government.

Q. You have spoken of some 52-pound rails; were any of such rails used on construction? A. Not to my knowledge.

Q. Please deduct the amount of rails used in construction from the gross amount of rails turned over by the Government, and let us know the balance; I do not mean total, of course, that were used in construction, but of those which were turned over by the Government and used in construction. The Governmeat turned over some 267 tons, but you say the Company used 126 tons of these; deduct one from the other, and let us put the balance on the record? A. Deducting the weight of 35-pound rails, of rails delivered by the Government to the Company, which were used in construction, from the total amount of rails delivered by the Government to the Company, I find remaining 141 tons of the rails delivered by the Government to the Company.

Q. Now, deduct the weight of imported rails used in construction from the total weight of imported rails, and give us the result. Your testimony is that 720 tons were imported and 236¼ tons were used? A. I do not think that I testified that 720 tons were imported; I gave the number, as I recall, of 40-pound rails imported and of the 52-pound rails that were imported, and someone else made an addition to it, and made it 720 tons. I said 609 6-10 tons of one weight and 119 tons of another weight, which does not make 720; it makes 728 6-10 tons.

Mr. ROBERTSON: Yes, you testified first it was about 720, and then you looked at your record and added the 8 tons, which I had not thought of.

(599) A. 469¾ tons of imported rails, not used on construction.

The CHAIRMAN: Q. Where are these rails to-day?

Mr. ROBERTSON: That is just what I am going to ask him now.

Q. That leaves, then, on hand, after all construction work was done, what gross quantitiy of rails, including those turned ever by the Government, and those remaining of the imported rails? A. Deducting from the total quantity of rails, made up of those delivered by the Government to the Cauca Company, together with the rails imported by the Cauca Company, the total of which is 996 6-10 tons, deductlng therefrom the total weight of rails employed on the construction, I find remaining 634 7-10 tons.

Q. Now, please state what became of this balance that you have just given us. A. A part of that balance was employed in repairing the track, and the remainder, after su'btracting that, should be on hand at Buenaventura.

Q. Now, please state what quantity of this balance was used in repairs, classifying the various weights. A. I find, of the 40 pound rails there were used on repairs 330¾ tons; of the 52-pound rails 79.63 tons.

Q. Leaving, presumably, on hand, what quantity and what weights of rails? A. 231 2-10 tons of the 35-pound rails; 42.61 tons of the 40-pound rails; 39 37-100 tons of the 52-pound rails on hand.

Q. Now, what was the weight of the rails which the Government turned over? A. I never weighed the rails turned over by the Government to the Company, but I believe, and have heard, that they weighed 35 pounds to the yard.

Q. Now, what you have testified to as to the expenditures for repairs between Cordova and 27.100, if you have (600) any detailed information on that point, kindly give it to us? A. No detailed information suggests itself to me at present.

The CHAIRMAN: As to what point; repairs, or construction, or what?

Mr. ROBERTSON: Q. Repairs. What information or estimates have you on that? A. That reminds me—that question—that I have made an estimate of the cost of repairs from Cordova to what was the end of the track to January, 1891.

Q. That was K. 27.100. A. Yes, to K. 27.100.

Q. Kindly give us that. A. As these papers have been displaced since the last time I had hold of them, I cannot for the present put my hand on that paper.

Q. Is this not it? A. I recognize this as the estimate; repairs of track from Cordova, K. 29.240 up to to K.

27.100, which is a distance of K. 6.860, cost $19,367, gold.

Q. That is not the question; I was asking you from Cordova to K. 27.100. I asked you to give me your estimate of expenditures for repairs between Cordova and K. 27.100. A. I have now given it to you as $19,367.

Q. Now explain what you mean. A. I meant to state that I made an estimate for the cost of repairs from Cordova, which is kilometer 20.240 up to kilometer 27.100, and I find the cost to be $19,367, gold.

Q. And when you said Cordova was kilometer 29.-240, that was a slip of the tongue? A. Yes, a slip of the tongue.

Q. Do you know who was the contractor for the construction of the road—that is, the new part? A. If I understand your question, I think I know who was the contractor.

Q. Please state what you know on that point. A. I (601) believe Mr. Cherry was the contractor for the construction of the road.

Q. What do you base your belief on? A. Upon a copy of a contract, which he once showed me, if I remember the contents.

Q. Have you any other information than the bare contract? A. I have nothing; what his position was in relation to the Company, definitely, I do not know.

Q. Did you ever have any conversation with him on that point? A. Very little.

Q. How much? A. I do not recollect now.

Q. Think a moment, and see if you can recall anything. A. I cannot recall anything at present.

The CHAIRMAN: I am just looking over your testimony, in which you say Mr. Cherry was manager of the road. Now, do you mean to say that you do not know what his relations with the Company were?

Mr. STINE: I think he said that in relation to whether or not Mr. Cherry was the contractor; is that not so?

The WITNESS: Yes; in answering that question, I said that what his relations to the Company were, definitely, I could not state. He may have been manager of the Company and, at the same time, as I have heard here in these proceedings—the Cauca Company and the C. C. & I. Company; I did not know the distinction between them—he might have been manager in one sense and contractor in another sense.

The CHAIRMAN: Q. As the question was asked you, no particular company was mentioned, I believe. A. In answering—if I can now answer the question—I will say

that in the contract which I have seen, which Mr. Cherry showed me, he was referred to as the chief contractor for (602) the Company in Colombia; whereas, before that time I frequently addressed communications to him as General Manager of the Company. That is all I know about it; it is for the Chair and the attorneys to settle what his position and his duties were.

At this point the examination of Mr. Carter was suspended for the purpose of calling to the stand Mr. Fremont Wilson, to whon the usual oath of affirmation was anministered by the chairman.

FREMONT WILSON EXAMINED BY MR. STINE.

Q. Mr. Wilson, what is your occupation? A. Civil Engineer.

Q. Where did you study Civil Engineering? A. At Missouri University and School of Mines.

Q. How long ago? A. In 1885.

Q. Have you been employed in railroad work since? A. Yes.

Q. And in surveying? A. Yes.

Q. On construction? A. Yes.

Q. Where have you been employed? A. In various parts of the country; in St. Louis on a branch of the Cincinnati, Topeka and Sante Fe.

Q. What other roads? A. On the Mississippi & Bonne Terre Railroad and on the Middlesburg Railway; also the Nashville, Cumberland Gap and Louisville.

Q. Have you ever been employed on any roads outside of the United States? A. Yes.

Q. Where? A. In South America.

Q. Where in South Amrrica? A. In the State of Cauca.

Q. On what railroad? A. On the Cauca Railroad.

Q. From what time to what time? A. My employment began the first of May, 1892, and ceased on the first of March, 1893.

Q. You are familiar, are you, with the surveys of that road that have been made? A. I think so; I am not so (603) familiar with the entire surveys, as with the surveys that I made myself—that were made in the camp where I was.

Q. Did you not see those surveys of the other portions of the work? A. I saw a map of them.

Q. Maps of all of them? A. Maps of parts of them.

Q. Are you familiar with the relative cost of doing work in that country and the United States? A. I think so, as

far as 10 or 12 months' experience would make one familiar with that country.

Q. You have heard Mr. Carter's testimony as to the cost of the bridge at San Cipriano? A. Yes.

Q. You also heard him modify it under cross examination, did you not? A. Somewhat, yes.

Q. What, in your opinion, was the cost of San Cipriano bridge? A. Well, I was there only two or three times—saw the difficulty under which they were laboring two or three times, but I would base my calculation on what such a bridge would cost in the United States, taking into consideration that, being a place where it was over the Dagua river, the difficulty under which they were laboring there, I calculate that in this country it would cost from seventy to seventy-five dellars a lineal foot; that is without the piers, the bridge erected on the piers.

Q. What would you make the total cost of that bridge? A. Fourteed or fifteen thousand dollars.

Q. With the piers, what would you estimate the cost of the bridge? A. That would depend very largely on where the piers were erected; they might be erected at a very small cost, and again they might cost almost as much as the bridge.

Q. I mean under the conditions under which the piers were erected there. I do not mean as to price. I mean the physical conditions? A. You mean, what would the piers cost there?

Q. I do not; I mean what would piers like those cost in the United States under similar physical conditions, if they ever prevail in the United States? A. I do not know as I understand exactly what you mean; if you mean what (604) would piers like those built there cost in the United States—

Q. Under similar physical conditions—not climatic—similar physical conditions— A. I should say for fifteen or twenty thousand dollars—like those erected there.

Q. Which would bring the price of the bridge in the United States to what? A. Sixteen or seventeen thousand dollars.

Q. I am speaking now only of the San Cipriano bridge? A. Yes.

Q. Now, you speak of the difficulty which was encountered at that point in erecting this bridge; who was the superintendent of bridge construction there? A. Tom Davis, as near as I know; he told me he was.

Q. Did you ever see or watch the work as it was done under his superintendency? A. I did, for a few hours.

Q. Have you any means of judging of his ability in

doing this class of work? A. Only from what I saw while I was there.

Q. What do you consider his ability as a bridge builder? A. I consider it very good on that one bridge.

A. Now, what, in your opinion, considering the difficulties to which you have referred to, did the bridge at San Cipriano cost, erected there? A. I should think not less than $25,000.

Q. Did you see the bridge at Sucre? A. Yes; I have seen it, I think.

Q. Are you not sure you have seen it? A. No, sir; I do not believe that I am sure I saw it. I saw the foundations and the cylinders, and those, but I know nothing about the bridge at San Cipriano.

Q. Now, you have heard Mr. Carter's testimony as to the cost of the surveys, have you not? A. Yes.

Q. That were made in and about Cali; that is to say, up to Cali; and you are familiar with those surveys, are you not; I mean with the fact of where the surveys ran (605) and what was done? A. Yes.

Q. You have heard the evidence of Mr. Carter as to the number of engineers that there were on that survey, the length of time they were engaged on the survey, the number of *peones* they had to help them, the number of instruments they had to purchase, and so on; the fact that they had to have horses, and that the Company fed the engineers; and you have heard his estimate—I believe he stated it to be $22,000. Is that, in your opinion, a correct estimate of the cost of that survey? A. Well, I should not think it is enough from the fact that—I only know the cost of the party I was with, and I conclude that—

Q. What was the cost of the party you were with? A. It was a $1,200 a month, and I was there ten months.

Q. So that that by itself would be $12,000; why do you think that $22,000 would not be enough? A. I think the country they were passing through was fully as rough as that we were going through, and it would cost them fully as much as us; and then there was a small party left back on construction; I do not know about that.

Q. How much do you think that survey cost? A. I should think it would cost $30,000 at least.

Q. Do you think that that is a very conservative statement of the cost? A. Yes.

Q. Rather an understatement than an overstatement? A. Yes.

Q. Have you heard the evidence of Mr. Carter on the nature of the ground and the yardage moved? What is your opinion of the amount, figured in proportion and per-

centage, of the conglomerate that is to be moved there? A. Over the part of the line that I am familiar with?

Q. And over whatever you know about? A. I only know where construction was going on, from the San Cipriano bridge up to San Jose, a very short distance beyond that point.

(606) Q. What proportion of conglomerate had to be moved there in that portion that you were on? A. I should think that from my observation on the ground and going over it, and the cuts that had been made, that the conglomerate would be at least 60%.

Q. Will you explain the nature of this conglomerate? A. It is a very hard, cemented gravel; we wouldn't hardly call it gravel in this country; made up of boulders and gravel.

Q. What is the effect of the rain on this cemented gravel or conglomerate? A. That I only know from the accounts of Mr. Dunn, the engineer, and the foreman, Pace. They claimed that if, after blasting, it would rain right away, it had to be blasted again, because it cemented together, but as to personal observation, I could not say whether that is true or not, because I was not on construction.

Q. Will you please state what, in your opinion, with the prevailing wages that were paid along the Cauca railway, would be the cost of removing this conglomerate? A. Well, I should not think it would cost less than $2.00 a yard in gold, under the conditions existing there.

Q That would be, at 100% for exchange, $4.00 in Colombian money, would it not? A. Yes, in Colombian money.

Q. Do you consider $4 a cubic yard a conservative or liberal estimate? A. I consider it very conservative on that particular section; in other sections I would not consider it conservative.

Q. Do you consider Mr. Carter's estimate of $2.40 very low? A. Yes, I do.

Q. Extremely low? A. Yes.

The CHAIRMAN: Q. I would like to inquire whether, in your classification of conglomerate, you include hard rock, or what is known as loose rock, in the meaning given it by Mr. Carter? A. I just include what is known there (607) as conglomerate; that is, the rock that has to be blasted, nothing else.

Q. And of that you say there is about 60%? A. Yes, over that particular section.

Q. Would you make any other classification as an en-

gineer over that part of the country? A. Yes, I would make loose rock and earth.

MR ROBERTSON—CROSS EXAMINATION.

Q. Have you ever been engaged as engineer-in-charge on railway construction work? A. Yes.

Q. That is, engineer in charge of the construction work on a railway? A Yes.

Q. Where? A. On the Mississippi and Bonne Terre.

Q Anywhere else? A. Well, I cannot say; then, at Middlesboro, I was foreman in charge; there was a chief engineer, but he never saw the work hardly that I was in charge of. I was what was called a division engineer in charge of construction.

Q. Was the work on the Middlesborro road or the Bonne Terre road of the same character as that which prevailed in the Cauca? A. No, I cannot hardly say it was; I never saw any conglomerate before till I saw it there.

Q. Have you ever had any experience at all in handling conglomerate? A. None whatever; just seeing it handled; that is all.

Q. Were you present at the Cauca when the blasting operations were actually going on for the removal of the conglomerate on that road? A. On one or two occasions I was.

Q. How long were you present while the blasting operations were in progress? A. A few hours at a time.

Q. And were you there for the purpose of taking part in the construction work, or simply as a spectator? A I was there laying out some work—helping Mr. Dunn, who was in charge of construction.

Q. What were your duties in that work? A. Surveying.

(608) Q. And while you were there you were busy at that work? A. No, not all the while I was there. After we got through with that work we would stand around and see the blasting going on and watch the men at work, and then we would walk over the work several times.

Q. Did you go over the work or take observations of the work for the purpose of estimating the cost of blasting out the conglomerate? A. Yes, I did.

Q. That was your duty? A. That was not my duty, but I did that for my own—

Q. Did you make any calculations at the time? A. No, I didn't make any particular calculations at the time.

Q. You simply took a mental obervation; is not that all? A. Yes, and then I got the opinions of Mr. Dunn and Mr. Pace in regard to the cost of it, for the reason that if there was anything to be made in it, I had some people here

in the United States who would like to take the contract.

Q. Who was the engineer in charge of construction at that time? A. Mr. Dunn.

Q. Where was Mr. Carter at that time? A. I think he was between the summit of the mountains and Cali on the survey.

Q. Were you there when Mr. Carter was Superintendent, or Chief Engineer on construction? A. No, sir.

Q. Are your observations as to the cost of handling conglomerate of so complete and satisfactory a nature that you would be willing to put your opinion against that of an engineer fully competent, and who was in charge of the work? A. Yes, sir.

Q. About how many hours of observation were required to give you that complete and satisfactory sense of superiority?

The expression "superiority" objected to by Mr. Stine.

(609) A. I could not tell how many times I was there, or how many hours. Probably during two or three weeks at different times we went over to judge of the work.

Q. I am asking you now how many hours you spent when disengaged in observing this question of the cost of handling the conglomerate? A. Well, I say I don't know how many hours. Two or three hours at a time at several different times.

Q. About how many times? A. I think there was one week when I went over the work every day for about six days, and probably spent in that time 10 hours on the work. During the other two weeks I was, say, three or four times on the works and spent another 10 hours there.

Q. So that taking your own estimate you spent 20 to 24 hours in observing the cost of handling conglomerate? A. Yes, sir.

Q. Do you think you spent more than that? A. I saw the work during more hours than that, but did not observe the men or stand by and see how they handled it, taking out the conglomerate. I did not spend more than 24 hours particularly watching this.

Q. Well, how did they handle the conglomerate during the 24 hours you were watching? A. They blasted it and then shoveled it into wheelbarrows and wheeled it away.

Q. How did they prepare the blast? A. They used drills.

Q. How did they prepare the blast? A. They drilled holes into the conglomerate.

Q. How many men to each drill? A. I think sometimes three and sometimes four men worked on each drill.

Q. That is to say, they had 3 strikers and one holder? A. No, in some instances they had two strikers only.

Q. There were no steam drills? A. I saw none.

Q. I should like to know whether there were two or three strikers? A. I think there was only two and one (610) man to hold.

Q. And the work was done just as ordinarily in this country? A. I saw no difference.

Q. Can you testify how long it took them to sink a drill? A. That I could not say. I knew it was very hard drilling, they did not get on much, but how long it took I could not say.

Q. How deep were they in the habit of sinking drills before putting in the blast? A. 10 or 12 feet I should guess.

Q. You saw drills there 12 ft. long? A. I think I saw them 12 ft. long, probably longer, 16 ft.

Q. Can you remember, positively, having seen any particular 12 ft. drill down its full length? A. I do not know that I do, I am sure I have seen men take drills out of holes 12 ft. deep.

Q. But you don't know how long it would take to sink this distance? A. I don't know. It would depend on the number of hard boulders that they ran up against. If they chanced to sink between boulders it would take less time than if they struck them, of course?

Q. In handling this conglomerate, is not the time required for sinking the drills an important factor in the expense? A. Well, I don't know that it is so very important. The important factor is the efficiency of the blast. If the blast did not amount to anything and did not even shake the surrounding material, it would not amount to anything. The blast is the important part.

Q. How many men to each blast? A. Two men.

Q. Are two men enough? A. Unless there is a great hurry.

Q. How long does it take them to prepare a blast charge after the drills are taken out? A. I should say that unless they spring a hole it would not take them more than ½ or ¾ of an hour.

(611) Q. Well, with these facts before you, is it not a fact that the drilling of the hole is a very important element in the expense? A. No, it is not so very important, there are only three men employed in the drilling and it does not make much difference how long they take, the expense is comparatively small. It is in the efficiency of the blast that the difference of cost comes in.

Q. Do you know whether in the majority of cases the

blasts were good, or efficiently placed, or whether they only threw out small parts of conglomerate? A. All that I saw were small pockets, the blasts had little effect and did not affect the conglomerate as it should do.

Q. Well, then, does not this tend further to show that in the blasting the cost of sinking the holes was an important factor? A. The cost of sinking was something, because so much time was what we call in this country wasted.

Q. How many gangs of drillers were employed while you watched? A. I think there were possibly two or, perhaps, three sets.

Q. How many hands each? A. Three or four.

Q. Not over four? A. I do not think over four.

Q Do you know how long these sets were engaged on blasting work, that is, for how long each shift? A. I don't know that I do. I might have known then, but I don't now.

Q. Did they work by the task or by the day? A. I think by the day.

Q. Do you know whether any particular number of feet was deemed a day's work? A. I did not.

Q. Is it not customary to term a certain number of feet a day's work? A. Not on any road that I have been on.

Q. Do you know for how many months these blasting operations continued? A. No, I could not say; they were going on when I arrived end when I left also.

(612) Q. Now, what were you doing when you were going over this section of the road which you have referred to, on which you estimate the conglomerate at about 60% of the material to be moved? A. We were generally returning or going out to our camps.

Q. How many of you together would make these trips? A. Sometimes 3 or 4, and sometimes 8 or 10.

Q. Any of them friends of yours? A. Mr. Dunn and Mr. Murphy and Mr. Pace were all friends of mine, so far as I am aware.

Q. Were some of them peons? A. Oh, yes. Only four engineers that I remember.

Q. You four engineers of the Company would all come together? A. Yes, sir.

Q. Now, how did you spend your time on these trips, in conversation or examination? A. We conversed, and also examined the ground, as a general rule.

Q. You did not talk about surveys at all. A. Sometimes on survey and sometimes about construction.

Q. So that, when you were going to and from your

survey camps, you spent your time more in talking about construction than about surveys? A. No; we talked a good deal about the cost of construction among ourselves at the camp. That is where I learned the cost mostly.

Q. In those few hours at the camp, did you spend more time talking about your own duties than on the duties that you were not employed on; that is, the cost of construction? A. We just conversed about construction while going over it; when we left it, we hardly spoke about it much.

Q. How long is this section you have gone over so frequently with your friends? A. That reached from the Sucre Bridge to a short distance beyond San Jose, the crossing of the river Dagua.

(613) Q. About how many kilometers? A. I suppose 2 or 3.

Q. A little further than a mile? A. Little more, I guess.

Q. Did you ever make any measurements to ascertain the quantity of conglomerate, as compared with rock or loose earth? A. No.

Q. Did you ever see any cross-section map of this section that you refer to? A. I saw the cross-section books to the east of San Jose—

Q. I want some idea of—well, what became of these cross-section books? A. They were left with Mr. Dunn. I know nothing more about them, and have not seen them since.

Q. No; nor anybody else, either? A. I was only there a short time, and never had charge of the books—Mr. Dunn had charge of them.

Q. You were there when he made the cross-section books? A. Yes; he also had others made up before we went there.

Q. Were they for that work? A. Well, they must have been for that work; Mr. Dunn went down the line every day or so.

Q. And took these books with him? A. Yes.

Q. Did you understand that he had complete cross-section books of the road east of Cordoba? A. I could not say whether they were complete or not.

Q. Were they intended to be complete as you remember them; were they sufficiently complete from an engineer's standpoint to enable you to state by reference to them what the cross-sections show with respect to the conglomerate or other materials to be moved? A. The parts I looked at were complete. I did not look at all of them.

I don't remember looking at any of them west of the Dagua river at Sucre.

Q. When did you last see those books? A. It may (614) have been in August or September, '92.

Q. What became of Mr. Dunn? A. I believe he is at present working on the Antioquia Railroad.

Mr. SCHRAMME: I think now he it on the Doralda Railway.

Q. Do you remember whether these cross-section books contained the classifications of the various kinds of material to be moved? A. I remember seeing quantities, but no classification.

Q. Then you have no other data beyond your own recolection of what you observed on these various trips over the road, which will enable you to determine the percentage of conglomerate as compared with loose rock or earth? A. I have no other data except my own recollection.

Q. And your recollection is derived solely from those trips that you made with the engineers and the peons going to and coming from your survey camps? A Well, I went a good many times and had opportunity of seeing the work going on.

Q. But no other data? A. I have no measurements.

Q. Were your observations as to the quantity of conglomerate, as compared with other quantities of material to be removed, so careful and accurate that they would enable you to contradict the sworn statement of the engineer in charge with respect to the quantity of conglomerate and other classes of material to be removed? A. I would as far as stating that it was 60%. I would not go beyond that.

Q. To get at just what you mean, do you mean to say that you are so confident of your accuracy with respect to the proportion of conglomerate that you are willing to contradict Mr. Carter's sworn statement in which he puts the proportion at a less figure than 60%. A. I am not contra- (615) dicting anybody; I state what you asked me.

Q. I ask if you are so confident of your recollection that you will contradict the sworn statement of the engineer in charge? A. I will stick to what I first said. The proportion is 60%. I cannot help it if I am contradicting anybody.

Q. Is your recollection so certain and sure that if Mr. Carter has sworn to a less percentage than 60% you will still stick to what you say? A. I do.

Q. Give us to what length or between what kilometers you say that this 60% of conglomerate extended? A. K. 29.500 to K. 37, about.

Q. Beyond K. 37, you made no calculation? A. I had no opportunity of doing so; I was not over that during construction.

Q. Were your observations so careful and accurate that you would be willing to contradict Mr. Carter in his statement that from K. 29 to K. 42 the percentage of conglomerate *in toto* was 38% compared with the loose rock and earth? A. Beyond K. 37 it may have been all rock or all conglomerate, for all I know. I was not on that part. The only thing that I say is that up to K. 37 it is 60% conglomerate.

Q. At the time when you made your observation with respect to the quantity of conglomerate, how much of it had been actually removed from the section referred to? A. It is 29,500 to Sucre, and the conglomerate had nearlly all been removed; there was some little work to be done in places.

The CHAIRMAN: Q. You judged from the state of the cuts? A. Yes; that is it; I made calculations for that.

Q. How could you tell the change in the slope and the pitch if the conglomerate had been all removed? A. Very (616) easy to get that from the part left standing; the pitch would be the same.

Q. Do you know whether it was or not? A. I could not tell, as it was all removed.

Mr. ROBERTSON: Q. That is just what I thought. Now, going on to bridges. What experience, if any, have you had on actual bridge construction? A. Actual bridge construction, very little experience.

Q. Where have you had that little experience? A. There have been bridges constructed on nearly all the roads I have been on, but I have not had anything to do with the construction myself.

Q. So that, in point of fact, you have had no experience as a bridge builder? A. No, sir.

Q. Have you ever had charge of bridge building? A. Never.

Q. How did you get at the conclusion that the San Cipriano bridge, without the piers, would cost $14,000 or $15,000? A. I did not get at that conclusion; I said that a bridge similar to the San Cipriano bridge, erected in this country at that time, would have cost that amount.

Q. How did you get at that, if you have had no experience? A. I have had some experience in buying bridges but not in building bridges. We bought 4 bridges on the Middlesburgh 100 ft. span; for one we paid $60 and for the other $65 per lineal ft.; 200 ft. span cost more; I do not

know how much more, but I should say not less than $10 more per lineal foot.

Q. It does not seem quite clear whether this includes erection. A. Yes. The piers were erected by us, but we made a contract with the Youngstown Bridge Co. to erect the bridge on our piers, and the contract price included everything.

Q. Do you know how much of the cost of this bridge was profit to the contractor? A. No; I could not say that.

(617) Q. So you are not able to state what the real cost of the bridge was? A. No; I do not know the real cost; we had different companies to bid on our plans, and we accepted the lowest bid.

Q. Naturally. And is it only from your knowledge with respect to this bridge that you estimate the probable cost of the San Cipriano bridge? A. No; we erected several steel bridges in 1887. The lowest contract was for $60 the lineal feet.

Q. Were these bridges in all respects identical with the San Cipriano bridge? A. No; the San Cipriano is heavier; it is a 200 ft. span; the cost per foot would be a little more, but it would weigh much more, and would be very difficult to erect on account of the heavy pieces.

Q. Well, is your knowledge of the cost of steel bridges in the United States the only basis for your statement of the probable cost of the San Cipriano bridge as erected? Please answer yes or no. A. It is.

Q. Then you have never had anything to do with the erection of a bridge in South America? A. None beyond seeing it erected.

Q. Did anyone ever tell you what the San Cipriano bridge really did cost? A. No one. Mr. Davis told me what he thought it would cost.

Q. That is nothing at all.

Mr. STINE: We will see about that.

Q. You do not know what the cost of any large bridge would be, delivered but not erected, do you? A. Not exactly.

Q. Have you any information that is sufficiently accurate to warrant you in swearing to it? A. No, sir; I do not think I have.

Q. Have you any knowledge of the freight charges on such a bridge as the San Cipriano from the States to the place of location? A. No.

Q. Have you any knowledge of the cost of transpor-
(618) tation of such a bridge from Buenaventura to the

place of erection? A. I think I have a little knowledge of what that would cost.

Q. But not of what it did cost? A. No, sir.

Q. Did you know the rates? A. No, sir.

Q. Your only opinion is that you think the rates would be naturally higher? A. Very much higher.

Q. You do not know how much higher? A. No; I don't know.

Q. You don't know whether the road transports it without charge or not, do you? A. I know nothing about it.

Q. You don't know what the Company paid for that bridge, do you? A. No.

Q. Do you know where they bought it? A. Mr. Cherry, I believe, said the Union Bridge Co., of Philadelphia.

Q. That is the only information you have as to where it was bought? A. Both Mr. Dunn and Mr. Davis said it was bought in Philadelphia.

Q. Your only information is to the effect that it came from Philadelphia? A. Yes; the Union Bridge Co., Philadelphia.

Q. You have no information as to the cost of it? A. Not at all.

Q. Now, how many gangs or parties of surveys were there while you were there? A. As far as I know, there were only two. Mr. Carter and Mr. Burgess—that is, on surveys. On construction Mr. Dunn had charge of the camp, and he had Mr. Boyle with him part of the time.

Q. Were you in charge of the party with which you were affiliated? A. I was, after Mr. Burgess left.

Q. How long were you in charge? A. About 6 months.

Q. From what time to what time? A. From 1st September I was in charge, though Mr. Burgess was the Engineer-in-chief.

(619) Q. When did you go on the survey? A. In May, 1892.

Q. How long did you continue on it? A. Until 1st March, 1893.

Q. Do you mean to say that from that time you were constantly in charge of your party? A. I will say that Mr. Burgess was Engineer-in-chief until September, 1892, and then I was.

Q But in the meantime you considered that you were substantially in charge of it? A. I was actually in charge, but nominally not.

Q. How many men constituted your party? A. Burgess, Murphy, Hall and myself.

Q. How many persons? A. We had from 16 to 20; generally about 18.

Q. Are you absolutely sure that you had 18? A. I am not absolutely sure that we had 18. Sometimes we had 19 or 20; not all the time. The average would be about 15 or 18.

Q. How many horses? A. We had three horses.

Q. Who was in charge of the party to which Mr. Carter was sent? A. As far as I know, Mr. Carter; that was my understanding.

Q. Do you know if any one else had charge of the party in the meantime? A. No, I do not.

Q. Do you know who composed Mr. Carter's party? A. I know that Mr. Boyle and Mr. Shaw went up with him, and I believe Mr. Besosa.

Q. Do you know whether they were actually members of his party? A. They were known as members.

Q. Do you know how long they remained? A. No; I think Mr. Shaw was with him the whole time, but I think Mr. Boyle came back.

Q. How long were you in camp making up your report after the work of the survey of your party was completed? A. I was only a little time on the notes. Murphy made up most of them.

Q. How long did it take after the completion of the (620) work to make the final report? A. I made part after returning to the United States.

Q. Did you discharge any of the laborers while getting ready in camp to complete your work on the report? A. No, I do not remember discharging any of them. We went right on with the location, and that took as many men as the survey did before.

The CHAIRMAN: Q. When was the letter of discharge sent out? A. I think it was on the 16th day of February, and I put in my time until the end of the month. I am not certain if any of the peons were discharged even then.

Mr. ROBERTSON: Q. What part of the road did your party survey? A. From the hill called Totoca to Buenaventura. I last surveyed from Totoca to San Jose.

Q. Was your party number one or number two? A. I do not know whether it was either, or whether it had any other number in the scale.

Q. Were you on the survey called the survey to Cali? A. Yes, our party would be called the survey to Cali.

Q. You have mentioned some gentlemen who were connected with the Carter party; were they engineers? A. Yes, as far as I know, they were.

Q. Do you know how many persons were in the Carter party? A. No, I do not; I was never in their camp.

Q. Do you know how many horses they had, if any? A. No, I do not. I do not know if they had any; we lived quite a distance apart, and, as far as I remember, I never saw his camp and never heard from them.

Q. In point of fact, do you know whether the expenses of the Carter party were as great as those of your party? A. In point of fact, I do not. I could not know this, because I did not keep their accounts.

Q. Do you know what the cost of passage out was, first-class, from New York to Buenaventura? A. My un-
(621) derstanding is that it was $96.50 from here to Colon, and from there I do not know what it was. Mr. Shaw told me what his passage cost him, but I have forgotten now.

Q. Was it about $150, first-class, New York to Buenaventura? A. I think Mr. Shaw said his passage cost about $150. I judge it could not be very much less.

Q. Do you remember an engineer by the name of Baker on the Cauca Railway? A. No; I never saw him.

Q. Do you remember Mr. Abadie? A. Never saw him that I remember.

Q. Did you know Mr. Brayer? A. I have seen him, yes; I never knew him; he was connected with Mr. Carter's camp.

Q. Do you know what he got by the month? A. No, I do not know, I do not know as he was employed.

Q. Do you remember a member of the party, Mr. Zorillo? A. No.

Q. Do you remember Mr. Mann? A. No.

Q. Mr. Gutierrez? A. No.

Q. Shaw, Boyle, Besosa? A. Yes.

Q. Do you know what they got per month? A. I do not.

Q. Do you know how many months they were engaged? A. I do not know; they came back on the same steamer as I did.

Q. Do you remember what Mr. Burgess got? A. Mr. Burgess told me.

Q. And what do you understand he got? A. $250, gold, a month.

Q. What did you get? A. $120 a month at first, and afterwards, when Burgess left, I got $200.

Q. Do you know what Murphy got? A. $100 while Burgess was there, and $125 after he left.

Q. What did Hall get? A. Hall got $125, I think; I heard him say he did.

Q. Do you know what the peons were paid? A. I know those in our camp.

Q. What were they paid? A. $1.40 to $1.60 C. C. per day.

(622) Q. I now hand you a paper headed, "Exhibit 3, Estimate of Cost of Surveys," which Mr. Carter has testified he has made up as his estimate of the cost of surveys. Kindly look at that, and point out such items as are incorrect; and such others as you do not dispute? A. (After reading estimate.) I do not see anything incorrect in the estimate, except the number of men in their party; I averaged them fifteen to eighteen.

Mr. Robertson asked that the document be marked for identification; the Secretary marked it "Exhibit No. 7 Defendant."

(The witness continuing:) It is apparently as correct as you could get it; of course Mr. Carter has only included two parties; I include one party on location and construction the whole time.

Q. You know that it is accurate with the possible exception of the number of men.

Mr. Schramme: Mr. Wilson, you have not examined the calculations; you do not know whether they are correct or not.

Mr. Robertson: Q. With respect to the peons, were they paid if they did not work, or do you know? A. Of course, I know; I was in charge of them; if they went out on the line in the morning and worked, and then if it began to rain, and they had to come back, they were paid; if it was raining and they did not go out to work, they were not paid; then we only kept those who took care of the horses.

Q. How much rain did you have? A. Very little; did not amount to anything; I do not know of any one day lost on that account, except during the last two or three months; while Burgess was there, between Juntas and San Jose, we worked almost every day.

Q. That is what I understood; give us as near as you can the number of days you did not work? A. I should (623) say we worked at least 24 days every month; we worked 26 days half the time, probably during the last six months; We did not get any rain absolutely until we got to Las Juntas.

Q. Then the men all lost as many as two days a month? A. Yes, during the last four months.

Q. And during those days what proportion of the 15 or 18 men would be laid off? A. During those days there

would probably be five men at work, because we sent the best men our for supplies sometimes.

Q. When you speak of the average of men being 15 or 18, you mean the number of men employed on an average, and that has nothing to do with the special time each man worked? A. No; that was the number of men.

Q. Then, if you lost two days a month on this number of men during the last four months, it would reduce the average number of men actually employed by just that much, would it not? A. I did not take that into consideration; I considered the average number of men on the pay-roll.

Q. Quite so; now, turn back for a moment to this bridge question. Do you know what proportion of the cost of the erection of a bridge the false work is? I am speaking of their erection. A. It would depend on the kind of a bridge you are going to erect.

Q. Take the bridge, such as it is, at San Cipriano? A. That depends a good deal on the kind of timber you are using. I have known the false work to cost more than the erection.

The CHAIRMAN: If Mr. Robertson will permit, the chair would suggest that that kind of testimony is not worth anything, since each case is a special one; this is no general law or ratio which can be applied.

Mr ROBERTSON: I want to attract his attention to the general situation.

Q. Do you know about what the false work would (624) cost as compared to the total cost of erection of such a bridge as that at San Cipriano? A. At that place, I should say that the false work would cost nearly as much as the erection of the bridge; probably more.

Q. Now, is it not a fact that when the San Cipriano bridge was put up the false work was all in place? A. I cannot say; I was not there when the erection began.

Q. Do you know if they did any at all? A. I do not know.

Mr. ROBERTSON: That is all.

Mr STINE: Q. Mr. Wilson, you have stated that Davis, who was chief contractor for the construction of the San Cipriano bridge, told you how much the bridge was going to cost? A. Yes.

Q. What did he tell you?

Objected to by Mr. Robertson, on the ground that it is heresay.

After discussion, the Chairman ruled that Mr. Davis,

being an officer of the Company, it would be pertinent to know what his opinion was as to the cost of the bridge.

Exception on the part of the Government.

A. He told me that the bridge and false work was going to cost the Company $30,000.

Q. Did he tell you what the cost of erection would be after the false work was in place? A. No: I asked him what the bridge was going to cost.

Q. How long was that before the bridge was actually erected? A. He was at work then.

Q. Was it completed? A. No; not quite completed.

Q. Do you know if he had any knowledge as to what the steel bridge cost? A. No; I do not know if he had any knowledge.

(625) Q. Do you know if he knew what the false work actually cost? A. He did not state.

Q. Do you know if he had anything to do with the erection of the false work? A. No; I was not there.

Q. Did he mean $30,000 gold, or $30,000 paper? A. $30,000 gold.

Q. Are you sure he meant gold? A. That was Mr. Davis' answer.

It being 12:50 p. m., the chairman adjourned the meeting until 11:15 a. m., on Monday morning, the 16th inst., as being the earliest time available for all the parties at interest.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,

Commissioner for the Government.

C. F. SCHRAMME,

Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Twentieth Session.

(626) Held at 30 Broad street on Monday, August 16, 1897, at 11:15 a. m.

Re-direct examination of Mr. Carter continued—Re-cross-examination of Mr. Carter by the Company.

Present—Commissioners, Attorneys and Counsel as before.

The chairman called the meeting to order at 11:20 a. m.

EXAMINATION OF MR. CARTER RESUMED BY MR. ROBERTSON:

Q. I understand, Mr. Carter, that you wish to modify or explain some of your testimony heretofore given with respect to the San Cipriano bridge; if so, do it at this time. A. In the interval since our last meeting I have had an opportunity to examine certain papers that have been offered here by the Company in support of their claim, and, taking the figures as shown in those papers, I desire to show what their estimate of the cost of the bridge is as near as I can. The San Cipriano bridge cost, as taken from the claim, $6,500, free on board, at New York; the Suere bridge $5,000; the combined weight of the two bridges was 146 8-10 tons, according to the report of the custom house officials at Buenaventura. I have taken the freight at $25 a ton—1¼c. a pound; I believe that is excessive, for the reason that if I send a package of freight from New York to Buenaventura that price is charged, but on large shipments I believe that price is reduced. However, assuming the cost of the freight to have been $25 a ton, the freight on both bridges was $3,670; the lighterage on
(627) 146 8-10 tons I have assumed it cost $5.00 a ton at Buenaventura; the ordinary charge on a package of about 150 pounds was 25c. Colombian money, and about 15 of these packages to the ton; at that rate it will be seen that in assuming $5.00 per ton as the cost of lighterage at Buenaventura, I have taken about double the usual cost; then the lighterage at Buenaventura would be $734.00; now the cement for the cylinders for both bridges I calculate at $886.60, placed in the cylinders; there were four cylinders, 5 feet in diameter and 25 feet long for the San Cipriano bridge, or 1,963 cubic feet; a barrel of cement we assume containing 3¾ cubic feet. Taken in this proportion, one part of cement, 2¼ of sand and 4½ of broken stone

or gravel, there were 116 barrels of cement required for the San Cipriano bridge, taking the cylinders at 25 feet long. It has been stated here that these cylinders were partly filled with rails; I have no knowledge of that; but, if they were, of course it would reduce the quantity of cement used by just so much, and these rails which were so used, I take occasion to say, were probably old rails, because previous to the time the bridge was built a number of rails had been removed from the track, forty-pound rails substituted for light rails, and they had been lying around, and were probably used; supposing that these old rails were not used, that rails which were delivered to the Company by the Government on the inventory of January, 1891, were used—these rails were inventoried at the low price of $7.77 Colombian money. Now, in the Sucre bridge I calculate there were 42 barrels of cement in the cylinders, for the reason that on the east side—the eastern piers or abutments of that bridge—there were two cylinders eighteen feet long, and on the western support of the bridge there were no cylinders, because the bridge seat—the bridge rested right on the conglomerate; I have figured, however, for the leveling up of the bridge seat, preparing for resting the bridge, required four barrels of cement, which I think is a liberal estimate; that would make a total of 116 barrels for the (628) San Cipriano bridge, 42 barrels for the 2 cylinders of the Sucre bridge, on the east side, and four barrels for leveling off the supports on the west side; making a total of 162 barrels of cement. I do not know the quality. I will assume that it cost $2.00 per barrel in gold here in New York; but I think it was a quality that could be bought for $1.50 in New York; a good quality of cement can be bought for $2.00 per barrel. 162 barrels at $2.00 per barrel would be $324.00; and 162 barrels of cement, freight to Colombia, at $3.00 per barrel, or one cent a pound, would be $486.00, maritime freight. 162 barrels of cement discharged at Buenaventura, computing at 30c. a barrel, gold—I do not know what it is exactly—probably I have overestimated it and I may have underestimated—would be $48.60 for the lighterage and transportation to the bridge I have put at $22.00. This matter of transportation, I will take occasion to say, has been allowed for in all of my estimates, because it will be seen that in these exhibits there are certain amounts for incidental expenses, supervision, transportation, and so forth, and it appeared in a sheet that was exhibited two or three days ago in the course of the examination that the total expenditures, pay-roll, official pay-rolls, on what was called the bridge gang in Colombia, was $6,938.25 Colombian money. I assume that the bridge

gang was sent down to Buenaventura, or a portion of them —as many as was necessary—to load the parts of the bridge on to the flat-cars. In my estimates, I have figured transportation as one of the incidental expenses; and I figured on the construction trains the locomotive engineer and his fireman, two brakemen and the wood used, less than $20.00 a day, Colombian money. Then the construction train was there for that purpose. In the two bridges there were less than 150 tons. Suppose the engine carries three freight cars, and each car takes eight tons, that would be 24 tons; that would be about six trainloads; they could make two trips in a day, down and back; so I have allowed nothing here for transportation because this transportation has al-
(629) ready been figured in. Besides there is in the exhibits an allowance of 32½% to cover those things.

Mr. CISNEROS: Q. For what have you allowed that 32½%. A. That is for salaries, incidental expenses of men employed on construction, as subsistence of employees on construction; all of these were not maintained; that is, their board was not paid by the Company; part of the men paid their own board out of their wages. And then there are tools and explosives; explosives had nothing to do with the erection of the bridges; tools probably had. I find the total cost of the San Cipriano bridge so much, the Sucre bridge so much, taken from the claim of the Company, freight to Colombia of both bridges, so much; cement which was put in the cylinders of both bridges has been figured here; passage of the bridgemen there and return $896. I have taken that passage out as far as Colon, because, as shown in the Company's claim, and I have assumed that from the Isthmus to Buenaventura it cost $40. I think it cost me about that when I went there; I do not know whether they went first or second-class; I am assuming that they went first-class, and $40 is what first-class passage costs from the Isthmus to Buenaventura, or I think about $25, gold, passage from Panama to Buenaventura; then, considering the fare across the Isthmus from Colon to Panama, a few days' wait which they might have on the Isthmus, and which I have allowed for, and passage from Panama to Buenaventura, and I think $40 would cover it all. Have abutments on the claim $1,289.25. I do not find anywhere in the claim, unless it is covered up under the general term "supplies" or "railroad material," any mention of the iron bridge cylinders other than this $1,289.25. Then the total cost, delivered at Colombia, is given as $18,969.83, gold. Now, in addition to that we have the total pay-roll on account of iron bridges, according to the Company's admission, on this

sheet that was put here, up to December 31, 1892, $6,938.25 (630) Colombian money. I have had an opportunity since the last meeting to look at the pay-roll for Jan., 1893, and I find item of iron bridges $2,656.90, pay-roll for January, 1893; for February, 1893, opposite iron bridge, I find $3,888.83; for March, official pay-roll for the bridge gang, total for the two bridges, $1,685.05. Probably after March very little work was done on these bridges, except in the way of tightening up bolts or nuts and so forth, and some painting afterwards. Leaving that out of consideration, that sums up $15,169.05 Colombian money; taking exchange at 100%—this transaction—this occurred at the end of '92 or the early part of 1893, and my recollection it that exchange was 100% at that time; that would make the amount $7,584.52 in gold. Adding that to the cost of the bridges placed on shore at Colombia, we have a total of $26,554.55 for the 2 bridges. Now, there were very good wooden bridges at San Cipriano and at Sucre when these bridges were built; they served as the false work; there were some modifications made, but they did not amount to much; the track of the ironbridge was a little higher than the track of the wooden bridge at San Cipriano, and that caused some little change; at Sucre, inasmuch as we had taken out the loose rock, the track of the iron bridge was on the same level as the original wooden bridge. This bridge at Sucre—this wooden bridge—was erected along in July, 1892. It was there not over 8 months when the Sucre iron bridge was erected, and the timbers were in very good condition, and I know that these timbers—some of them—were used afterwards for reparing other bridges. Therefore, for the timbers that were used in the two bridges, I have credited the bridge account with $800 in gold; deducting that from $26,554.35, I find $25,754.34, the cost of the two bridges, and as my estimate of the two bridges was 22 thousand and some odd hundred dollars; now, taking into consideration that a portion of this 32% salaries, shop expenses, general administration and so on should be credited on this bridge estimate, it will appear that I am not so very far off in my estimate of the cost of the bridges.

(631) Mr. STINE: I object to that statement, and ask that it be stricken out.

The CHAIRMAN: The Commission, of course, wants your explanation as to a comparison of the items—

Mr. STINE: I object to all of that last part and ask to have it stricken out.

The CHAIRMAN: It is not necessary for the witness—

The WITNESS: With permission of the Chair, I would

say that I was examined in detail as to the cost of these bridges, and for that reason in order to make—

Mr. STINE: No; I object to it.

The WITNESS: For that reason I have detailed these particulars.

The CHAIRMAN: The Chair wishes to call the attention of the witness to the rip-rapping; have you included that in your last estimate?

(The Witness:) I have figured up that 162 barrels of cement were used in the cylinders. Then I would explain that there was rip-rapping done on both of these bridges, both when they were erected and afterwards in December, 1893. At that time there was quite a panic there, because a high freshet had destroyed a large quantity of freight in the station as San Jose, and we feared that damage might be done to the bridges, and we employed quite a good deal of cement in rip-rapping these cylinders, and it is probable that a portion of these barrels remaining over were used at that time.

Mr. ROBERTSON: Q. Now, in reference to the question of police force or military protection, provided for by Article 27 of the Concession, do you know whether or not there ever was any occasion for the calling in of the police or military forces to protect the servants or property of the Company? A. On one occasion there was thought to be (632) reason for calling in the police force.

Q. What occasion was that? A. That was in the month of June or July, at Caballete, in 1891.

Q. What was the trouble? A. The trouble there was that there was some discontent manifested by the laborers that had been imported from Panama, and the timekeeper of the man who had charge of the superintendence of the construction that was going on there at that time—

By Mr. STINE: Q. Were you there at that time? A. Yes; I was there at that time. This man went down to Cordova, and sent a telegram to Buenaventura, stating that those laborers were about to make an insurrection there, and were going to march down to Cordova and sack the town, and when the telegram reached Buenaventura the manager came up to Caballete with the Prefect of the province of Buenaventura, the captain of the police, and a number of other officers, with a company of guards, and a number of civilians who had volunteered for service, but it was found that these people had not intended any violence at all.

Q. Was there ever any other occasion, so far as you know, when the services of the military forces were required

to protect either the property or the employees of the Company? A. I cannot recall any at present.

Q. And this one that you do recall was a false alarm? A. I so considered it.

Q. You have heard the testimony as to the payment to the Company by the Government of certain sums in libranzas, have you not? A. I have.

Q. Do you know how these libranzas were redeemed? A. I do.

Q. State how. A. They were redeemed at the Custom (333) House in part payment of customs on goods, to the extent of 50%; for instance, if I had made an importation into Colombia, if the duties on that importation were $1,000, and if I was the owner of libranzas, I could pay $500 of those duties with the libranzas. The rest had to be paid in money.

Q. Do you know what the custom of the Company was in regard to selling or disposing of these libranzas, so that they might be used by the merchants who were importing goods into Colombia; in other words, do you know how the Company disposed of the libranzas, in order to get them into the hands of the merchants who were to use them in part payment of import duties? A. I do.

Q. State what their custom was. A. The custom was for any one in Buenaventura, who had to pay duties, to come to the Company and offer to purchase libranzas at a discount, because they were received at the Custom House at par, and the Company sold them at a discount.

Q. And in that way the importers made some profit by purchasing the libranzas at a discount, and turning them over at the custom house at par? A. Certainly they did.

Q. What was the amount of the discounts? A. That I could not testify to positively; they varied according to the demand.

Q. Do you know the points between which the discount varied? A. I cannot testify to that; I can simply say that I believe that it varied—

By Mr. STINE: Q. Do not say what you belive; say what you know. A. Positively, I do not know anything about it.

Q. Have you any knowlege at all as to how the discount varied at any time? A. My recollection is that discount up to 5% has been allowed.

Q. Do you remember the form of these libranzas? A. I do.

(634) Q. State it, please. A. They were about the size of a bank note, those that I saw, if I remember correctly.

and their face value was from 50c. to $10.00; they were issued as an equivalent for the $50,000 gold that had been deposited as earnest money.

Q. Do you know whether the demand for those libranzas was sufficient to call for the use constantly of all of them there were in the hands of the Company, under its arrangement with the Government? A. I do.

Q. State it. A. The demand for these libranzas was not very brisk at times, and there was at no time a demand for all of the libranzas that were in the hands of the Company, so far as I recollect.

Q. Do you know whether or not the Company ever offered any legal proof to the Government that it had expended on the construction of the road as much as $200,000. American gold? A. I don't know.

Q. Do you know whether or not the Government ever attempted to obtain an inspection of the Company's books in Buenaventura? A. I do.

Q. What was the result? A. Failure; they did not inspect them, as far as I know.

Q. Do you know why they were unable to inspect them? A. Because they were not allowed to do so.

Q. By whom were they prevented from inspecting them? A. By myself and the treasurer, Mr. Blum

Q. Were you acting under any one's instructions in refusing the inspection? A. I was.

Q. Under whose? A. The instructions of the Company; I assumed at the time that I was, and I subsequently ascertained that I was.

Q. Do you remember the occasion of the Goverment's request to be allowed to inspect the books? A. The occasion was the demand of the Company for the return of the (635) deposit of $50,000; the object of the Government, so far as I know, though I don't know positively, was to ascertain—

Mr. STINE: Hold on; we do not want to know what you do not know; we only want to hear what you do know; do not give us any presumptions or suppositions; give us knowledge.

Q. Did any of the officers of the Company report to you that the Government had made a demand to be allowed to inspect the books? A. I do not remember.

Q. Did any officer of the Company tell you that the Government wished to inspect the books? A. I don't remember.

Q. But you say your recollection is that the demand for inspection of the books followed the Company's request

for the return of the $50,000 deposit money? A. That is my recollection.

Q. Do you know when that was, in point of time? A. About the close of the year 1891, as near as I can remember.

Q. Now, according to your statement, to what point had the construction of the road proceeded when the Company had expended on construction the sum of $200,000, American gold? A. That point I have not figured exactly. It is my belief that at the end of the year 1892 the Company had not expended $200,000 gold on construction, strictly speaking.

Q. Do you know about how much in American gold the Company had expended when the road had been completed as far as San Jose? A. I know about—in reasonable limits.

Q. Please state it. A. They had probably spent a little upwards of $200,000 when they reached San Jose, according to my estimate, including all shipments of rolling stock and so forth.

(636) Q. I mean on construction, and the completion of the road; I don't speak of rolling stock. A. If you except the rolling stock and so forth, and include only the work of construction, probably it would be nothing in excess of $200,000; I have not figured that; have not thought of it, because I viewed the matter under another standpoint.

Q. Now, in order to be precise, I will read to you article 25 of the Concessson, which is as follows: "As security for the performance of the obligations contracted, the Concessionary is to deposit in the hands of such person as for such purpose may be designated by the Government at New York the sum of fifty thousand dollars ($50,000) in American gold, or the equivalent therefor in other money, before the 27th day of October next. The Government shall return such sum to the Concessionary as soon as the latter shall legally prove that he has constructed a part of the road the value whereof shall be equivalent to the sum of two hundred thousand dollars ($200,000) in American gold." Now, can you state to the Commission, from any estimates that you have made, or any knowledge that you may possess, to what point construction had been completed when the Company had completed a part of the road, the value whereof was equivalent to the sum of $200,000 American gold? A. I can state that.

Q. Please do so. A. Referring to the exhibit, Estimate of the cost of construction from K. 29.750 up to San Jose, I find that the clearing was 1.12%; cost of grading, 45.80%; the bridge, 15.53%; the present Sucre iron bridge,

10.26%; cross ties, 3.41%; ballast, 3.78%; track laying, 3.43%; rails and rail fastenings, 9.11%; superintendence, transportation and incidental expenses, 6.96%; then, taking that as the basis, the percentage of the different items entering into the cost of the construction of the road from K. 29.750 up to San Jose, and remembering that I have estimated that the quantity of earthwork on these two kilometers 650 meters, from the end of the track, 27.100 up to 29.750, (637) was about ¼, or was about 6,400 yards; I have ascertained from the estimates, as shown by this profile of work when done by Mr. Cisneros, prior to 1885, the total—I saw the profile, and got from Mr. Cisneros and Mr. Dougherty the total of these two kilometers, 650 meters, which was about 59,000 cubic yards, and as the Company, according to my estimate, removed 6,400 yards, or about 10% of the grading, and as the grading is here in this estimate set down as 45 8–10% of the total cost of construction, I estimate that the grading done on these particular 2 kilometers, 650 meters was about 4 92–100 of the total cost of construction on these 2 kilometers, 650 meters. I take the work done by the Company on these K. 2.660 as follows: Clearing, 1.72; grading, 4.92; bridges, 25.79; super-structuref 19.73, and superintendence, transportation, and so forth, 6.96. I find summing up that the work done on these K. 2.650 in 1891 up to K. 29.760 was 59.12% of the total cost of construction. Taking as a basis the cost of $38,000 per kilometer, as set down in the Concession, for construction 59.12 per cent. at $38,000 would amount to $22,465, which would be the cost of the work done on 1 kilometer, and for the 2.650 kilometers $59,533.84, which would be the cost of the total quantity done by the Company on these 2 kilometers, 650 meters, at the rate of $38,000 per kilometer. Now, from there to Caballete is 430 meters and figuring the cost proportionally, which would be an approximation, it would cost $16,340; the total cost, then, of construction up to Caballete, which is K. 30.180, would be $73,875.84, the amount of money expended on construction up to Caballete. Then it appears that when the track reached Caballete, therefore, the Company was not entitled to the return of the $50,000.

Mr. STIXE: We do not want you to argue this case. You just answer the questions. You are intelligent enough to know that you have no business to do that.

(Witness continuing:) Subtracting $75,873.84, the (638) amount expended on construction up to Caballete, from the $200,000, I find $124,126.16 remaining. I divide that—this has got to be argumentative in a measure—then I divide the $124,126.16 by $38,000, which would give me

the number of kilometers beyond Caballete that would have to be built by the Company before the $200,000 had been expended, which is 3 kilometers, 266 meters, and as Caballete is 30.180 I add the 3.266 and find that the track should reach 33.466 from Buenaventura before $200,000 had been expended on construction.

Mr. ROBERTSON: Q. When did it reach that kilometer in point of time? A. I have been informed by Mr. Cisneros that the track reached—

Mr. STINE: That won't do.

Q. Don,t give any hearsay; just give your personal information and knowledge.

The CHAIRMAN: Q. Were you on the ground at the time the track reached there? A. I was not.

Mr. STINE: I do not object to having it go in. I do not want to make it harder for you to get your proof. Let him tell what Mr. Cisneros told him and I have no doubt it is correct.

A. I learned from Mr. Cisneros that the track reached Bodegas on the 5th of March, 1892, and Bodegas is about 2 kilometers beyond Caballete, and I learn from him also that it reached Sucre about the 8th day of June; then supposing that the track advanced proportionally in point of time, it appears that they would not have reached this point—

(639) Mr. ROBERTSON: Q. That is, the point at which the $200,000 would have been expended? A. Yes, the $200,000 point until the latter part of April or in May, 1892.

Mr. STINE: Q. Do you know when this $50,000 was paid in libranzas? A. I have seen it stated in your address to the Commission that it was paid some time in April—April 2, 1892; I am not sure.

Mr. STINE: Q. It was paid during the month you say the road reached that point?

Mr. ROBERTSON: Q. Now, in making this last estimate, have you proceeded on the supposition that the cost of the construction was $38,000 per kilometer? A. I have.

Q. Now, at the actual cost, as distinct from this $38,000 per kilometer, to what point did the road reach when $200,000 American gold had been expennded in construction? A. I previously stated that at the end of the year 1892 the $200,000 had not been expended; now, I have not figured precisely, because I have figured up the distance upon the basis of $38,000 a kilometer.

Q. But I do not see how you get this basis of $38,000 a kilometer.

Mr. STINE: He stated before that he took it from the Concession.

Mr. ROBERTSON: Yes, but the Concession does not state it at all—except in reference to the question of interest.

The CHAIRMAN: The chair understands that it was merely a supposition on the part of the witness for the purpose of calculation only.

(640) Mr. ROBERTSON: Q. Now, figure up the distance on the basis of actuality, as distinct from the $38,000 per kilometer estimated cost, and, in figuring it up on this basis, give the Commission the benefit of your estimates.

The CHAIRMAN: The chair would like to suggest that, in making his basis, the witness should know what he is to do, Is he to include the salary of the officers? We ought to know this, because it brings us back to the original point at issue. You can answer that question, Mr. Carter, by stating the actual cost of construction.

A. The figures I have already given in these proceedings of the cost of construction I find $40,652.58; then I have added the construction up to San Jose $133,546.55; to that I have added the surveys, $22,805; that gives a total of $197,004.13. I may have made some slight mistakes in addition. Am I to include rolling stock imported into the country?

Mr. ROBERTSON: No.

The CHAIRMAN: Q. There is no contingent allowance in this, is there? A. No, further than the 32%.

Mr. ROBERTSON: Q. Now, state just what that is; there is some contingent in that, and there always has been in every estimate he has made. A. To three of the estimates: on the cost of the surveys, construction from the end of the track up to 29.750, from 29.750 up to San Jose, and the work east of San Jose, there has been the sum of $47,106.20 distributed. That consists of the following items: 50% of the local administration and shop expenses for 1891, 1892 and 1893, $18,721; explosives as per claim of Company, $6,970.12; tools, etc., $1,815.08, and salaries, incidentals and traveling expenses of certain employees, (641) chargeable to construction, and not included in the other estimates, $19,600, making a total of $47,106.20 distributed.

(Witness continuing:) That brings us up to the time when the work was finished to San Jose, or rather to the time when the station was opened at San Jose, Sept. 1, 1893; now, at that time some work had been done beyond San Jose, but exactly the amount it is very difficult to say, because a portion of the work beyond San Jose was done at the end of the year 1892 and some of the work beyond San Jose was done as late as the end of 1894, but I find—

Mr. STINE: Q. Was not some work done much later than that there? A. Some may have been done, but I have no knowledge of it, because I left the country; precisely I cannot figure the point at which the Company had expended $200,000.

Mr. ROBERTSON: Q. The point to which the Company had constructed the road when it had expended $200,000? A. Now, it is difficult for me to do that; I don't believe it can be done, but I find it had about reached San Jose when they had expended $200,000 on construction, leaving out rolling stock.

Q. Do you mean $200,000 or the $197,000 odd? A. Well, $3,000 is a very narrow margin in an estimate of this kind, and I would say $200,000.

Q. That is what you mean by about $200,000? A. Yes; I would say here: I will modify that answer that I have just given that a portion of that 47 thousand and some odd hundred dollars was distributed east of San Jose, and the work done east of San Jose is not included in this estimate of $197,000.

Q. But, do you mean that in addition to the total cost of the physical construction there was distributed, over the expenses of construction as you have estimated them, the sum of forty-seven thousand dollars made up of surveying (642) expenses, local administration expenses, and maintenance expenses of people necessary for the construction of the road? A. I do mean that.

Q. And do you mean that you have included in this distributed sum everything which, in your opinion, is a proper charge against construction? A. If I have not overlooked anything, I have.

Q. It has been your intent to include everything? A. Yes.

Q. What unit of measure did the Company use in its work prior to May, 1892? A. The English foot.

Q. And do you know whether the line of the road was laid out by the Company and constructed with a view to providing for a double track? A. I have no knowledge that a double track was kept in view, or any provision made for it.

Q. So far as you have knowledge of the extent of the road being laid out and constructed, was it so constructed that a second track could be laid down over it? A. You mean to inquire whether the width of the roadbed was sufficient for a double track?

Q. Yes. A. It was not; a single track.

Q. Were the cuts and fills so made as to provide for a future double track? A. No.

Q. No reference whatever to a future second track, so far as you know? A. No.

Q. Were they wide enough to permit of a second track? A. They were not; no.

The CHAIRMAN: Q. What was your top width of embankment, and width of cut? A. Three meters; I think.

Q. Same for both cut and embankment? A. No; the excavations were four meters, and some of the cuts were narrower than that.

(643) Mr. ROBERTSON: Q. How about the bridges; were they so constructed as to be adaptable for two tracks? A. Single-track bridges, all of them.

Q. And not of sufficient width to put down a second track? A. No, not wide enough for a second track.

Q. Do you know whether weekly reports of receipts and expenditure were sent to the Minister of Public Works? A. So far as I know none were sent.

He is your witness again, Mr. Stine.

RE-CROSS EXAMINATION TAKEN UP BY MR. STINE.

Q. You have stated this morning, Mr. Carter, that the Buenaventura office, as represented by you and Mr. Blum, refused to allow the inspection of the books of the Company at Buenaventura; did you state to the officials anything tending to show that they might be able to get an inspection of the books of the Company elsewhere? A. They might have inferred that from what I said.

Q. Is it not a fact that you wrote a letter in your own handwriting, signed by you, in which you stated that, if they wished to examine the books of the Company at New York City, the books were at their disposal? A. I may have said that; I do not recollect writing it.

Q. Try and recollect, and see if you did not. A. In reply to that I say that I do not recollect writing any such letter, because, as a matter of fact, the Commissioners were there; no letters were necessary; we had oral communication.

Q. Did you write a letter to the New York office in which you stated that you had informed the Commissioners that they, or any other representative of the Government, was at liberty to examine the books of the Company (644) in the New York office? A. I think I said that; that is my recollection.

Q. Mr. Carter, you are sure you did not write that letter to the officials? A. I am not sure, but I see no reason for having written the letter.

Q. Now, you spoke about *libranzas* to-day; were

there not two kinds of *libranzas*? A. There were two kinds.

Q. Will you describe the form of one of them—I am referring to those issued for the supposed return of the deposit? A. They were in the shape of a banknote, being receivable for 50% of the Customs duties.

Q. Will you describe the form of the *libranzas* with which the interest was supposed to be paid? A. I think the first issue of *libranzas* on account of interest was of a similar form.

Q. Is it not a fact that they were employed simply as orders on the Custom House without qualification? A. I saw once an order on the Custom House written on a piece of foolscap for $100,000, but as I previously stated, the first issue of *libranzas*, amounting to about $122,000, was in the form of bank notes.

Q. But they are not similar to bank notes, are they—the Colombian bank notes are different? A. Oh, yes, they are different, of course.

Q. These were special orders on the Custom House? A. Yes.

Q. Now, do you know whether or not these *libranzas* which were orders on the Custom House of the kind of which you say you have seen one for $100,000, do you know when these *libranzas* were submitted for payment to the Custom House, whether or not the same were ever refused payment? A. I do not know, positively.

Q. Did you ever hear that they were? A. I heard something of that.

Q. You did hear that payment was refused? A. Yes. I heard that *libranzas* were presented for redemption at the Custom House and refused.

(645) Q. Was that of frequent occurrence? A. Quite frequent, as far as I can remember.

Q. What was the reason that was given? A. Because, on its face the *libranzas* did not indicate a payment of money, they were simply to extinguish a debt to the Custom House.

Q. Were not those *libranzas* issued for interest, orders for money. A. I do not recollect.

Q. You stated that the were yourself, just now, and that you had seen one for $100,000. A. No, what I saw was the orders in bulk, particularly I did not examine them and I have no recollection of the inscription on them.

Q. Were they admissible in payment of duties? A. I think they were.

Q. And you had heard that they had frequently not

been accepted in payment? A. No, I heard that the *Tibranzas* had been presented to the Custom House and the Collector had refused to pay cash.

Q. Now, Mr. Carter, you made use of an expression when my friend on the other side questioned you as to how much this road had cost, that $200,000 had not been expended strictly on construction; what did you mean? A. I distinguished between construction and repairs or reconstruction of the road.

Q. And also operation? A. And operation, of course.

Q. So that, in figuring in either of these two sets of calculations that you made as to the time when the $200,000 had been expended, you figured simply construction in its strict engineering sense of new construction? A. New work, yes, sir.

Q. You supplied the ellipsis in the question every time that construction was used by putting in mentally the word "new," did you not? A. Yes.

Q. Suppose you were to undertake to build an entirely new road to-day and you were asked to estimate as to what (646) that road would cost to construct, would you understand that to limit it only to the actual physical construction, or would you understand that the parties who were asking your opinion as an expert on the subject of cost of construction would expect you to give them an answer which would cover all manner of expenditure generally?

The form of the answer as begun by the witness was objected to by Mr. Stine as non-responsive, and he said he would withdraw the question and put it in another form.

Mr. ROBERTSON: Is it going to be competent before this Commission for my friends to ask a question, and then when the responsive answer proceeds to a point which is disagreeable to prevent us getting the benefit by withdrawing the question from the record?

The question was then allowed to stand as read.

A. I should begin at the beginning. I would estimate the cost of examination of the road, surveying and so forth.

The CHAIRMAN: No detail; please state the facts as briefly as you can.

Mr. ROBERTSON: We are entitled to the witness's answer.

The CHAIRMAN: Well, proceed, Mr. Carter.

A. If they asked me for the total cost of constructing the road, I would endeavor to estimate the total cost, including everything. I will say that if a promoter of a

railroad in South America came to me for an estimate on the cost of construction, I, as an engineer, would estimate the cost of surveys, location, and the quantity of work to be done, quantities and material, and so forth; and I would itemize in that way the various sources of expenditure; and if there were further expenses to be made for financial operations, etc, I should leave them for the promoter to (647) figure out, as he could do it better than I could; as an engineer, I should arrive at the cost of construction only.

Q. Would you include the cost of running an office as part of the expenditure? A. Yes, while on construction and if it were necessary on construction.

Q. Would you not include the salary of the man whose business it was to buy rails in New York or Europe and ship them out? A. I don't think I would.

Q. You would not consider that part of the expense? A. No; it depends on the salary he got.

Q. That has nothing to do with you. I am asking if you would include the salary of the man who had to buy the rails—a purchasing agent, in other words? A. I do not know whether I would or not.

Q. I want to get at the ingenuousness of your answers. Now, if I were a capitalist about to build a railroad, and I said "Mr. Carter, I want to construct a railway down in Colombia, and I want you to figure up what it will cost me, what it will cost to construct that road," do you mean to tell this Commission that you would not include the salary of the purchasing agent who would get out your construction materials, whose business it would be to buy rails and cross-ties, supposing that you wanted them creosoted, which cannot be done down there? That man would not be a necessarry part of your scheme of construction and of the cost of construction? Would he not be an integral part of making up the mental labor of building the road? A. The employment of a purchasing agent would depend largely upon the scale of operations. If I were building extensively in South America I would have an office in New York, or possibly in Europe; but if I were working on a relatively small scale, and required a locomotive, a few cars, and so forth, I would procure those articles from a commission merchant, and, acting on the principle of general economy, I would prefer to pay, say 2½%, for the (648) purchase and be certain that they would be shipped in a proper manner and sent out to me.

Q. Is it a practice for persons who are about to build a road to confine their operations to raising the money for construction simply to the sum required for physical con-

struction and nothing else, so far as you know? A. I have no experience in that.

Q. You have not? A. No.

Q. You do not know whether it is the custom when raising capital for an enterprise of any kind to take into account all possible contingencies that cannot be foreseen in the way of expenditure, and provide more money than apparently required—is it not the custom? A. I don't know what is the practice.

Q. If I came to you and told you that I desired to construct a bridge across the North River similar to the one that is about to be constructed in the coming year, and for which the foundations are already being laid, and asked you the question as a promoter—"I wish to raise sufficient money to build the bridge; what in your opinion will be the amount required?"—would you in your estimate include the cost of administtation, office, etc., for the calculations which we would require? A. As an engineer I would estimate the engineering expenses.

Q. Well as an expert in bridge building what would you do? A. In that case also I would estimate all the engineering expenses and leave the promoter to estimate the cost of the financial operations.

Q. Suppose you were consulting engineer of the bridge Company and the Directors asked for a report from you before the bridge was complete, as to what the probable cost of constructing the bridge would be, in that case you would answer by giving them a statement including only the actual physical cost of construction on the bridge, and would make no reference or allowances for administration or any other expenses in your report? A. I would allow for all the expenditure on account of construction, and the (649) necessary administration for carrying on that construction if I was asked that general question.

Q. That is exactly what I want to know. You would say if the Directors of this Bridge Co. asked you for a report in which they required your view of what it would cost to construct that bridge, that if your report contained no reference to any kind as to cost of administration, and any other expenses incidental to the completion of that work; that your report would be faulty, would it not? A. Yes, it would be.

Q. You would consider it your duty to call their attention especially to those other expenses, even if you did not detail them, would you not?

The CHAIRMAN: The chair will eliminate discussion by calling the witness' attention to the fact that when an engineer makes an estimate of a piece of work, he is ex-

pected to include the total cost of the work, and great complaint is frequently made that the ultimate cost is in excess of the engineer's estimate; having this in view, I think the witness should be able to answer the question as to what would be properly included in the estimate in order to cover everything and leave no deficiency.

A. Estimating on any public work, I would be disposed to give a liberal estimate rather than otherwise, and figure a large percentage for incidentals and contingencies.

Q. What do you call incidentals and contingencies? A. I would estimate or judge for administration, a bookkeeper and expenses for offices, traveling expenses, assistants, and after that I would allow and add a liberal percentage of that.

Q. That is all right.

The previous statement of the Chairman was then read, and the witness stated that he had listened attentively to it and his answer was made bearing it in mind.

(650) Now, Mr. Carter, you heard read here a statement of about 16½ kilometers of newly constructed road had been examined by the Government Commissioners and yourself, measured and turned over and completed, and was accepted by the Government Commissioners? A. I have seen the document referred to

Q. That included that part of the road which had been partially built by Mr. Cisneros and finished by the Cauca Co., did it not? A. It is the total distance from Cordova to Caballete, and subsequently to San Jose.

Q. You have also testified that in your opinion the Company had paid out and expended in January, 1892, on the basis of $38,000 gold per kilometer, equal to about $200,000 gold? A. Yes.

Q. Do you know when this $50,000 was returned to the Company? A. I do not remember positively.

Q. I will refresh your memory; may it not have been in April, 1892? A. I think it is so stated in your address.

Q. It was paid in libranzas? A. Believe it was.

Q. Do you know long it took to redeem these libranzas? A. I do not.

Q. Do you know that the amounts were due the Company for interest? A. I don't know whether they were due or not; they were presented.

Q. What do you mean? A. I knew that the Government was obliged to pay certain interest moneys under certain contingencies to this Company.

Q. Do you know whether or not they were paid when

they were due? A. I don't know that they were due when they were paid.

Q. Do you know that they were paid at the time they were claimed to be due? A. Do you distinguish between *libranzas* and money?

(651) Q. That makes no difference for the present purpose. A. I do not believe, so far as I can remember, that payments were prompt

Q. They were not prompt? A. No.

Q. They were delayed months and sometimes years? A. Months, I will not say years, because I do not remember.

Mr. ROBERTSON: Q. Do you say you remember times when they were not received? A. I mean to say that these *libranzas*, for instance—*libranzas* for the return of the deposit—were in the hands of the Treasurer of the Company at Buenaventura, and I do know that when these *libranzas* were presented for payment—sometimes in large sums—I know they were not promptly cashed.

Mr. STIXE: Q. You misunderstood my question. Under the Concession, which you have read— A. I have.

Q. The Government was to pay the Company certain moneys as subsidies. These subsidies were to be calculated on the basis of interest at the rate of $38,000 per kilometer, and they were to become due at certain times as certain work progressed and construction took place. Do you or do you not know when these payments came due, or whether they came due—if they were paid or not? In order to ease your mind, I will say that the Government never paid us in any other way than in *libranzas*. A. I think they were not paid when they were claimed to be due.

Q. Do you know whether or not any of these payments were due when they were claimed to be due? A. I know that some of them were not due when they were claimed to be due.

Q. I am not speaking of the $50,000 now; I am speak-

(652) ing of the subsidies. A. I have my view of the case and the Company has another. I believe that certain payments of interest were claimed to be due when they were not yet due.

Q. What were they? A. There was a claim made for interest on construction when the track reached Caballete, and payment was not made at that time; that is to say, payment was not made when it was claimed to be due.

Q. Was it paid subsequently? A. I believe it was.

Q. Were the other payments subsequently made which were claimed? A. I do not know, because certain payments may have been made after I left Colombia.

Q. Were they paid with interest added, do you know? A. It is my impression, and I am strongly inclined to believe that interest on the arrears of interest was included.

Q. So there were arrears of interest? A. There might have been.

Q. You have just stated that there were. A. Have you discovered something that you could not find before?

Q. No, but it has taken me half an hour to get at something I have just now got out of you; now, you state that there were arrears of interest? A. I stated that there were claimed to be arrears of interest, and interest was included on these arrears, and bills sent in to Bogota.

Q. Was it paid? A. I believe it was.

Q. With the calculated interest? A. I don't know.

Q. Are you sure that you do not know? Try and think; you have come out occasionally with great things after thinking awhile. A. I do not know as I will say; I will swear that I do not know that the arrears for interest were paid.

The CHAIRMAN: (To the witness:) Q. You seem to be advocating one side or the other; try and confine yourself (653) to merely a statement of the facts, if you please? A. All right; yes, sir.

Mr. STINE: Q. Will you be kind enough to state if you know that the calculations were made for arrears of interest; that is, for interest on interest, because it was claimed that the interest moneys were not paid when due. Do you know whether or not these arrears of interest, which represented interest on interest, were paid by the Colombian Government? A. I do not know.

Q. If they were paid by the Colombian Government, would you not consider that an acknowledgment—

The question was objected to by Mr. Robertson, and question withdrawn.

Mr. Stine said that he wished to examine the witness the next day for a short time, and would ask that the Commission do not meet until 11:15 next day.

It being 2 p. m., the Chairman adjourned the meeting until 11:15 to-morrow.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Twenty-first Session.

(654) Held at 30, Broad Street, New York City, on Tuesday, August 17, 1897, at 11 : 15 a. m.

Re-cross examination and re-direct examination of Mr. Carter continued—Mr. J. B. Dougherty called and sworn on behalf of the Government.

Present—Commissioners, Attorneys and Counsel as before.

The chairman called the meeting to order at 11 : 40 a. m.

EXAMINATION OF MR. CARTER CONTINUED.

MR. STINE: I don't desire to cross examine Mr. Carter any further.

RE-DIRECT EXAMINATION BY MR. ROBERTSON.

Q. Mr. Carter, you asked on the cross-examination yesterday about the refusal to pay the libranzas; do you know whether the Custom-house officers ever refused to receive the libranzas, properly tendered in payment of duties? A. I do not know that they did.

Q. Did you ever hear it charged that they did A. Never heard it charged.

Q. Now, you were also asked on your cross examination yesterday what, if any, estimate you would make with respect to the cost of construction of, for instance, a bridge, if promoters were to approach you, and ask you for an estimate of the cost of construction of such bridge; now tell me what estimate you would give, going over the details, (655) if you were asked that question. A. I would take into consideration all the details relating to the labor on the bridge, the cost of the materials employed therein, and I believe that would be about all—labor and materials.

Q. Taking the Cauca railway as an illustration, suppose you were asked by the officers of the Cauca Railway to give them an estimate of the cost of the construction of that road from Cordova to San Jose, what details would you estimate upon? A. Upon the following: The cost of the surveys of the road; I would then ascertain, as nearly as possible, the amount of material to be removed, its nature, and estimate as close as I could, the cost of removing the same; I would consider the cost of transportation of materials for use in the road—the material including the ties, rails, and so forth. If the cost of construction was asked for, of course, I would leave out rolling stock; I would simply consider the cost of the surveys and of the grading, and

what is called superstructure, the transportation of the materials entering into that, and the tools, of course, used in making the grade.

Q. And I assume you would also include the labor of preparing and putting the materials in place after they had arrived on the ground, would you not; A. I would; yes.

Q. You have had experience in making estimates as a constructing engineer, have you not? A. Yes.

Q. Did you ever hear of a constructing engineer being asked to estimate the promotion expenses of an enterprise? A. No, I never did.

Q. Did you ever attempt to estimate the promotion expenses of a railway enterprise? A. I never attempted to.

Q. Did you ever know of any engineer who ever did attempt it or who has told you that he ever did attempt it? A. No; I have no knowledge of any attempt to estimate promotion expenses by an engineer.

Q. Did you ever hear of a constructing engineer including in any estimate of the cost of construction of a (656) railway, of any part of it, the expenses of financing the enterprise as an entirety? A. No; I do not recollect of any.

Q. So far as you know, are constructing engineers ever employed professionally to estimate upon the financial expenses of a railway enterprise as such? A. I do not know that it is customary; I think that would be the province of a financier or the promoters themselves.

Q. Is it not considered outside the sphere of a constructing engineer? A. I would so consider it.

Q. Did you ever hear a practical engineer claim that it should be considered part of the professional work for such an engineer to include the financial expenses of an enterprise as part of the construction? A. No; I never have.

Q. Well, so far as you have had experience as a constructing engineer, have you ever had any data furnished you upon which you could make sufficient calculations as to the expenses of financing a railway enterprise? A. No; never had any such data furnished me.

Q. For instance, if the President of the N. Y. C. & H. R. Railway Company should state to you that his company was about to construct, say, a ten-mile spur, to connect with some part of that railway, and should ask you to estimate carefully and fully the cost of constructing that spur, would you feel that it was part of your duty to caution him that he must not lose sight of the fact that the enter-

prise was in the hands of a corporation, and that the N. Y. C. & H. R. Railway Company would have to provide itself with funds with which to finance its general enterprise? A. No; I would not venture to make any such suggestion to him.

Q. Why would you not venture to make any such suggestion to him? A. He might consider it impertinent.

Q. Might he not consider that you were going a good way outside of the duties of a constructing engineer? A. I think so.

(657) Q. Now, Mr. Carter, have you since, you were last examined about the cost of the construction of the Cauca Railway, examined the pay-rolls of the Company which were offered to the Commission here with a view to ascertaining from them what light, if any, they threw upon the number of men employed on construction? A. I have examined them last night—a portion of them.

Q. Please state to the Commission the result of your examination on that point? A. The result of the examination is that the pay-rolls or the abstracts—the Company's abstract from the pay-rolls—showing the apportionment of expenses between operation and construction, corroborate what I have said in regard to the number of men employed from month to month to a remarkable degree.

Q. Have you here in figures the result of your examination? A. I have them, yes.

Q. Please produce it. A. This paper comes from the Cauca Railway Company. I found it in the office of Mr. Cisneros here, and it is headed as follows: Distribution of Labors of the Cauca Railway Company and the Colombia Construction and Improvement Company for the month ending Jan. 31, 1891, Superintendent Department. I will just read part of it: first, the total apportionment to construction here is $3,909.84, in that is included conductors and clerks, $83.50; repairing engine Cali, $208.64; expenses, fuel and so forth, $191.45; these items sum $483.89. I subtract that from the total set down here as construction expenses $3,909.84 and the remainder is $3,426.25. Now, I have proceeded all the way through in my estimates, exhibits and so forth on the basis that the wages averaged $1.40 a day, and that a man worked 24 days in a month; then he would earn in a month $33.60. Dividing, then, the $3,426 25 by $33.60, the amount received by a laborer in a month, would be the number of men employed; I find that to be 102 men; that was the number of men employ-

(658) ed on construction work during the month of January 1891, according to this abstract of the Company's pay-roll.

Q. Now, what did you testify in your examination was the number of men employed on construction during that period? A. I gave the number of men for January and February in answer to a question which you asked me in my examination. You asked me how many men were employed, and in my answer I joined both January and February together; then, I will take the expenses for construction for February also, as shown in this paper, before I find what answer I gave before. I find that number of men employed in February, according to the same method, and from the same source, was 159: I stated before just how I arrived at it.

The CHAIRMAN: Q. The Chair would like to make one point clear on this question; you have taken as your average wages $1.40 per day; does that include the wages of the foremen of these separate gangs? A. Well, the foremen—some of them—got as much as $3 a day, but I have taken the average at $1.40 because I think that is sufficiently high because some of the laborers were employed at less than $1.40.

Q. Then, if your average of days' wages is not correct, the number of men which you figure would not be correct? A. No, in order to ascertain exactly the number of men, it would be necessary to know each man's wages.

Q. Your average is probably rather a little above than a little below; consequently, would not the number of men be a little greater than you have given? A. Yes; suppose I take $1.30 as the average wages per day, the number of men would be increased about 8%, instead of being 102 men—suppose I average the wages at $1.30 a day—there would be 110 for January, and for February, instead of there being 159 men, there would be about 170 men.

(659) Mr. ROBERTSON: Q. Go right on with the other months, if you have them. A. I testified, as appears by the record, that, during January and February, 1891, the average number of men employed on construction would be between 150 and 200.

Q. Do you find by an examination of the pay-rolls that that was a liberal or a conservative estimate? A. It was a liberal estimate.

Q. That is, you overestimate the number of men so employed? A. Yes.

Q. Proceed with the other pay-rolls, and state your deductions from them. A. For March, by the same process on the Company's summary of pay-rolls, 180 men; for April, 170 men; for May, 176 men; for June, 221 men; all ascertained from the Company's pay-rolls. It will be noticed that I did not testify as to the number of men employed

in May, because I was absent on surveys. I testified to the number employed in January and February, and then I stated that the number was increased till in June it reached such a number; I find here for June, as I have just stated, 221 men.

Q. You are now proceeding with an annalysis of the pay-rolls? A. Yes; for July, I find from an analysis of the pay-rolls, 281 men; for August, 282 men. In order that there may be no mistate in relation to the method which I have pursued, I will just refer to this July pay-roll of 1891. I find the official pay-roll $1,415.70; official roll means the salaries of the officers in the Company's office at Buenaventura, and these foreign labor bosses, superintendents that were on construction; the mechanics' roll, $501.60; when I speak of the number of men on construction, I mean the labor on construction and on clearing, grading, excavation and so forth. I do not include the men in the shop; and I find on surveys laborers in engineer's camp, $293.60; this I do not consider as construction, (660) because I referred to this as labor on clearing and excavation. Summing up the official pay-roll, the mechanics' roll and the laborers in engineer's camp, I find $2,209, and the total apportionment to construction for July, 1891, is $11,653 on the Company's pay-roll, leaving a balance of $9,444 on strictly construction work, in the sense in which I used the word in giving my testimony. Dividing that by $33.60 I find 281 men; for August I find 282 men, from the Company's pay-rolls; for September, 243 men from the same source; October, 1891, 213 men; November, 1891, 76 men; for December, 47 men; all this was in 1891; for Jan., 1892, I find 71 men; Feb., 1892, 89 men; for March, 1892, 190 men; for April, 1892, 141 men; for May, 1892, 152 men; for June, 1892, 213 men; for July, 1892, 330 men; for August, 1892, 350 men; for September, '92, 317 men; for Oct., '92, 337 men; for Nov., '92, 280 men; for December, '92, abstract not found; that is to say, that it has not been delivered to the Government.

Q. That is, the Company has not produced an abstract of its pay-rolls for that month? A. No. For Jan., '93, I find from this abstract of the Company's pay-rolls, 237 men; for Feb., '93, 165 men; for March, '93, 80 men; April I have not got, because it is only up to the 31st of March, 1893, that the expenditures have been approximated in these exhibits between construction and operation.

Q. And this apportionment that you refer to has been made by the Company? A. Precisely.

Q. And what you have is done to distribute the expenditures amongst those employed on construction work, and

those employed in the factory or shop, or local office of the Company at Brenaventura? A. Precisely.

Q. That is the only change you have made in those abstracts of the pay-rolls? A. Precisely.

Q. Now, you have told us what you testified to as regards the number of men employed in January, February, March and April; now, tell us what you testified to with regard to the succeeding months? A. I would have to re-
(661) er to the minutes to testify to what I said.

Q. I guess you can do so? A. Upon referring to the minutes of the proceedings, in my former testimony, I find that I did not testify as to the number of men employed during the months of April and May. I stated in a general way that the number of men increased until quite probably it reached 300 in June; that is, men on construction; I testified with respect to the period between June 30, 1891, and October, 1891, that I could not say categorically whether there was an increase or decrease in the number of men employed on construction. I testified that my best information was that by the middle of July there must have been a small increase; after that I feel quite positive that there was not any increase beyond the number there in June or July, not exceeding 300 men. I testified that the number of men employed on construction during the months July, August and September was practically about the same, that was 300 men; I testified for the months of of November and December I would say the number of men on construction would be less than 200; when I said there was a decrease of men, I meant that it was at the end of October. I testified that the maximum of men on construction during Jan. and Feb., 1892, was probably about 150 men. I testified I had no positive recollection as to whether there was a decrease between Dec., '91, and March, 1892. I testified that there was more construction done in Jan. and Feb., 1892, than in Nov. and Dec., 1891. I testified that there were engaged on construction work when I returned on the 10th day of May, 1892, no more than when I left, and in answer to the question: "Well, about how many in the aggregate?" I testified between 150 and 200 men, probably. I testified that in the month of July, 1892, there were between 250 and 300 men on construction. I testified that I did not know how many there were in the month of August, 1892, because I was in the interior some fifty or sixty miles from the work. I testified that when I returned from the interior to the work, in the latter part
(662) of November or the beginning of December, I did not pay particular attention to the number of men on construction. I testified, in answer to the question "Do you

know about how many men were employed on new construction during Dec., '92?" "I do not," and in answer to a question asking about the number of men, I testified 250 to 300 men. I will here remark that I was mistaken as to the date I returned from the interior on the survey. I stated the latter part of November or early in December, and at a subsequent meeting I took occasion to correct myself, and said that it was in the month of Jan. that I returned when I passed Wilson's camp. I stated that there were about 150 or 200 men on construction work in Jan., 1893, and I testified that there were about the same number in February, 1893. I testified that there were about 50 or 75 men in March. This is as far as I have been able to extend my apportionment of the expenditures between construction and operation from my examination of the Company's pay-rolls—the abstract made by the Company of its pay-rolls. Subsequently to March, 1893, I find no abstracts furnished by the Company to the attorneys for the Government, and in order to confirm my testimony as to the number of men employed on construction, I would require more time to examine the pay-rolls than I have had at my disposal.

Q. That is, you mean you would have to examine the pay-rolls as distinguished from the abstracts of the pay-rolls? A. Yes.

The CHAIRMAN: Q. The chair notices that in the estimates submitted for the cost of surveys, cost of repairing the road from Cordova to the end of the track, cost of completing the road from the end of the track to the end of the grading, cost of construction from the end of the grading to San Jose, and estimate of the work done east of San Jose, the unit price is constant for the entire period of about 6 years, while the rate of exchange, of course, was changing during that time; is it correct to (663) consider these prices as constant during that entire period? A. I will say that by far the greater portion of the work of grading was done before the end of the year 1892, and, up to the end of 1892, exchange I do not think went above 100%. When I went to Colombia in Jan., 1891, the exchange was about 97%. I think it did not go above 100% during 1891 or 1892; in 1893 there was a decided rise in exchange, but there was very little of the work of excavation done after March, 1893, and for that reason I have made no change for the fluctuation of exchange.

Q. Then the variation in the rate of exchange after 1892 did not affect the price of labor? A. The rise in exchange would affect the price of labor, and, of course, in a very accurate estimate, you would have to figure that effect

on the removal of materials, but I have considered that the work done after March, 1893, as compared with the work done previously—I have considered that the difference in the rate of exchange would make no difference—no material difference.

Q. Then, in your opinion, it would not materially affect the correctness of the estimates? A. No.

Mr. CISNEROS: The higher the exchange was the more favorable it would be for the Company, inasmuch as we have taken an average of 100%, the accounts being kept in gold.

Mr. ROBERTSON: Q. Mr. Carter, I understood the chair to ask you whether the variation in exchange caused a variation in the wage scale of the laborers—were the laborers paid in Colombian currency? A. They were.

Q. And was track kept of the rise and fall in exchange and the wages changed from day to day to suit that? A. No; it was not.

Q. Did you not say to the chair, in answer to its ques-(664) tion, that the rate of exchange affected the rates of wages paid to the laboring men? A. I may have said that.

Q. Do you mean that? A. I meant it at the time, but I answered without due deliberation.

Q. Now, in point of fact, did the rise or fall in exchange make any difference in the amount of Colombian currency paid to the laborers as wages? A. It did not; to the common laborer it made no difference whatever.

Mr. ROBERTSON: That is all, Mr. Carter.

RE-CROSS EXAMINATION BY MR. STINE:

Q. I understood that you had never heard of an engineer making an estimate which included the administration and general expenses where he was called in to report on the cost of constructing a road? A. That is correct. I have really heard of very few estimates made by engineers.

Q. Do you consider that an answer to my question? A. No; no, it is not an answer.

Q. I wish you would answer my question, then? A. That may be correct. I do not remember the identical language I used. That is, as near as I can remember the substance, correct.

Q. Are you acquainted with Mr. Francisco J. Cisneros? A. I have the honor.

Q. Is he an engineer? A. He is, I believe.

Q. Will you look at this book and state what its title is? A. "Ferro-Carril del Cauca; United States of Colombia; Report on the project of constructing a railway from

the bay of Buenaventura, upon the Pacific Ocean, to Cali and the Valley Cauca, by Francisco J. Cisneros, C. E."

Q. Look at page—the page is not numbered here—the page after page number 54 in this book; you look at it; I will read it to you: "Summary of estimates for the cost of (665) construction of the Cauca Railway. Is that correct? A. Yes.

Q. Now, here I find "Schedule Nos. 1 and 2; ex-propriations, bridges, culverts, and so forth; station houses, so much; houses for guards, so much; way, so much; rolling stock, so much; general accessories, $213,000; clearing and grubbing, so much; contingencies, $481,230.73; expenses of administration, $481,230.73? A. You have read that correctly.

Mr. STINE: I wish to have this paper marked for identification, and I also offer it in evidence.

The Secretary marked the book for identification as "Claimant's Exhibit No. 53."

Mr. STINE: That is all I wish to ask this witness.

Mr. ROBERTSON: That is all, Mr. Carter; thank you.

Mr. CHAIRMAN: We are much obliged to you, Mr. Carter.

Mr. JOHN B. DOUGHERTY was then called as a witness for the Government, and the usual oath of affirmation was administered by the chairman.

EXAMINATION TAKEN UP BY MR. ROBERTSON.

Q. Mr. Dougherty, please state your age, residence and profession? A. My age is fifty-three years last February; my residence is Wilmington, Delaware, and my profession is Civil Engineer.

Q. How long have you been a Civil Engineer? A. Since 1865.

Q. Have you ever had any experience as a contracting engineer in the construction of a railway enterprise? A. I have.

Q. Whereabouts and how much? A. Well, I have figured out the roads I have been employed on; if you desire I could give them to you in detail; but I have had considerable experience.

(666) Q. Please state it? A. Well, I have been on the Pennsylvania Railroad, Western Division; I had experience there as a rodman; from there I went to the Laurel Fork R. R., Virginia; the Ohio river surveys from Pitts-

burgh to Cairo, for the U. S. Government; the South Mountain railroad, of Pennsylvania. I will state here that during the whole of my experience I have never been directly or indirectly connected with more than five or six people or companies, and my experience has all been obtained through connection with these people or companies. Later on I was on the Pittsburgh water-works survey a year and a half, and on the Homer and Susquehanna, as Chief Engineer of that road, where we found a pass 500 feet lower than the summit of the Alleghany tunnel of the Pennsylvania Railroad; then on the Monte Alto Railroad; then I went on the Northern Pacific road, and surveyed it down to the Yellow Stone river; I was locating engineer of the Shenandoah Valley Railroad, and I surveyed the Cumberland Valley road from Harrisburg to Potomac river; then I was engineer on the Madeira and Mamora railroad in Brazil for the Collins Brothers. I was surveying the Alleghany river from Olean, in New York State, to Pittsburgh, for the U. S. Government, and the primary survey of the Baltimore & Philadelphia for the Baltimore and Ohio Railroad; after that I went to Dique, Colombia, from Cartagena to Calamar, and then I entered the services of Mr. Cisneros in 1880, and have been in his service ever since, entirely. My first work was the improvement of the Dique from Cartagena to Calamar; that was one of the first works of Trautwine & Totten before they built the Panama railroad. Then I may say I returned home occasionally, and was connected with gold mining, sometimes on my own account, sometimes for other people.

Q. Give us in detail your experiences in railroads, with respect to the number of roads, and your position on them since you have been with Mr. Cisneros? A. I went to the Cauca Railroad in September, 1881. I remained there until the December following; from there I went to the Girardot; then after that I went to the Antioquia road. From (667) the Antioquia road I went again to Cauca; I think that was in February or March 1883, and I remained there until about June of the following year, 1894. I think I remained on the Cauca railway from 14 to 16 months; after that I went to the Antioquia railway again. On all of these roads I was there—namely, the Antioquia and the Cauca—I was there as assistant manager, or so-called vice-director, and chief-engineer. From the Antioquia road I went to the Barranquilla and Bolivar railway also as chief-engineer.

It being 1:30 p. m. the chairman declared the meeting

adjourned until 9:45 the following day.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Twenty-Second Session.

(668) Held at 30 Broad Street, New York City, on Wednesday, August 18, 1897, at 9.45 a. m.

Examination of Mr. Dougherty continued—Mr. F. J. Cisneros called and sworn on behalf of the Government—Cross examination of Mr. F. J. Cisneros by the Company.

Present—Commissioners, Attorneys and Counsel as before.

The Chairman called the meeting to order at 9.55 a. m.

EXAMINATION OF MR. DOUGHERTY TAKEN UP BY MR. ROBERTSON FOR THE GOVERNMENT:

Q. Are you familiar with the amount of material that had to be removed in the construction of the Cauca Railway from Buenaventura to K. 29.750? A. I am.

Q. Have you made any calculations or figures on that point? A. I have.

Q. Please state what amount or amounts of material were necessarily handled, and the classes of material so handled in constructing the road from Buenaventura to K. 29.750? A. This calculation was made from the cuts and the fills on the profile book. The profile book was made up from time to time in the office, and I am very strongly under the impression that it was made up from the notes of the engineers as the work progressed; that was our custom, to put on the profile book the total quantity of excavations and embankments after completed. That was the (669) general rule on all the roads I have been on. From that profile book I have taken these quantities. The classification is not in this; they are simply the total quantities: from Buenaventura to K. 20.240, 172,269 cubic yards of cut and 98,768 cubic yards of fills, making a total of 270,947 cubic yards embankments and excavations. From K. 20.240 to K. 27.100, 63,461 cubic yards cuts and 56,200

cubic yards fills; total cuts and fills, 119,661 cubic yards. From K. 27.100 to K. 29.750, 59,491 cubic yards cuts, 31,536 cubic yards fills; total embankments and excavations, 91,027 cubic yards. The total of these is 295,221 cubic yards of cuts and 186,414 cubic yards of fills, making the total of cuts and fills 481,635 cubic yards. Now, we did a good deal of work by administration under our own management and by our own work. We had contractors also. We paid them $1.75 for rock and conglomerate, Colombian currency; for earth excavation we paid them 55c.; for borrowed embankments 50c. per cubic yard. We had several firms of contractors working there and these were the general prices we paid. I have in my mind now two contractors, one a Frenchman, who came from Peru, and the other was a native firm called Sierra & Palacios.

The CHAIRMAN: Q. About what year? A. Sierra & Palacios worked in 1881, 1882, 1883 and 1884; the French contractor worked—he came a little after I arrived on the ground and I gave him a contract; he was on the work when I left there.

Mr. ROBERTSON: Q. You spoke about earth excavation; how about loose rock? A. Well, loose rock we paid 55c. for and $1.75 for rock. We classified hard conglomerate as solid rock. Wherever powder was required we classified as solid rock. Wherever it could be barred or picked out we classified it as loose rock.

Q. Now, can you state what the prices for labor were (670) in the years you have now referred to as compared with later prices; say, compare 1884 with 1893? A. We paid various prices; they varied according to the worth of the man. Prices ranged from $1.00 to $1.20 C. C. To the majority we gave $1.20 C. C.

Q. What was the discount at that time? A. The discount at that time I will say was about 15% silver.

Q. What would that be equivalent to in gold per day? A. That would bring it down to $1.02.

Q. But what were the rates for 1893; I am asking you to compare the 1884 rates with the 1893 rates. A. Well, according to the evidence that I have heard here, the Cauca Company paid $1.40 C. C. I will say now that whenever I mean gold, I will mention gold; otherwise it will always be silver or Columbian currency.

Q. That makes, at the rate of exchange testified to, 70c. gold per day as against $1.05 in 1884? A. That would make the prices of labor 70c. a day, yes; but I think in 1894 exchange was about 200% or 150% premium; taking it at 150%, it would reduce the figures to 70c

(*sic.*). I have heard that exchange was about 100% in 1893 and 1894.

Q. That is to say, at $1.40 C. C., in 1893, at a gold premium of 100%, as has been testified to, wages would be 70c. per day in gold in 1893, as compared with $1.02 in gold in 1884? A. Yes; that is the case.

Q. You have stated that there was evidently a very large excess of excavation as compared with embankments; will you please state whether the embankments were paid for separately? (This question was asked at the instance of the chairman.) A. They were paid with the embankments; they were paid for by borrowing material, and often times when the haul was too far the earth was wasted and the embankments made of borrowed material.

Q. I think you stated the price for borrowed material (671) was 50c.? A. Often times it would be more, if the material had to be taken from a distance, and for that reason, when not hauled from a distance, we made a discount of five cents on account of its being less expensive to haul. It was often to the advantage of the contractor to borrow material on the spot, and let other material waste.

The CHAIRMAN: The total, however, is of no value in making up an estimate.

Mr. CISNEROS: This has been introduced only to show the amount of earthwork—as stated by Mr. Cherry in his report of 1893—was not correct. Mr. Cherry says in cuts and fills I removed only 169 odd thousand cubic yards, while you have seen by this statement that it is 481,000. I will say that it has no bearing upon the estimates put in in the present case.

Some discussion then ensued, in which Mr. Schramme denied that Mr. Cherry had mentioned such an amount for cuts and fills.

Mr. Stine stated that Mr. Carter had also not testified specially to the cuts and fills.

Mr. ROBERTSON: Q. On the basis of the work done between Buenaventura and Cordova, taking into account the amount of cutting and filling, and the material to be handled, have you any information—have you made any estimate upon the average number of cubic yards moved per day per man on that section? A. Not particularly on that section more than on any other. We generally got these records—we kept the records of that work, of all the work on a general average done per man; and I have found several of my own reports. The general average is per day per man in cubic yards 1 8-10 to 2 2-10 per day.

The CHAIRMAN: Q. On what kind of material? A. On ordinary earthwork.

(672) Mr. ROBERTSON: Q. How about conglomerate? A. That would depend altogether on the location and the haul. Solid conglomerate would be about one cubic yard per day; loose conglomerate would average a little more. I think we classified conglomerate as solid rock, and loose conglomerate as loose rock.

Q. Are you familiar with the Spanish language? A. I am not familiar with the Spanish language; however, I understand it sufficiently to make myself understood about the works and understand those on all the works.

Q. Are you sufficiently familiar with the Spanish language to be able to converse in Spanish upon a subject which falls within your province as a railway constructing engineer? A. Well, as a rule; when I went to Colombia I knew nothing of the Spanish language, and Mr. Cisneros always furnished me with a translator and interpreter, and I am very sorry to say that for that reason I never studied the language, but I knew enough of it to understand the import of what people said, sufficient to give my orders and directions.

Q. Do you understand the Spanish language when it is used in relation to your work or duty as a constructing railroad engineer? A. Yes.

Q. How long have you been so familiar with the Spanish language? A. I commenced to get familiar with it after I went there; that is, I suppose, 10 or 12 years ago, or before that.

Q. Where have you spent the last 10 or 12 years of your life? A. Principally in Colombia.

Q. What is the language spoken there? A. The Spanish language.

Q. Have you had an opportunity to use or listen to the Spanish language continuously during that time in your professional work? A. Yes.

(673) Q. Do you know what the words "*obras*" and "*trabajos*" mean, as used in Colombia by railroad constructors? A. Yes, do. Now, let me explain. All my reports to Mr. Cisneros were in English, but when I had occasion to write to the Government, or have any communication with the Government or with the people of the country, I would write my letters in English and have them translated. After a letter was translated I looked over it and saw if it came within my idea. I had a general idea of the contents; I could distinguish an error or mistake in any technical term and have it rectified.

Q. That is, if the Spanish equivalent of your English

were not put into the translation, you could distinguish it? A. I could; yes.

Q. You know the language well enough to use the proper word to express the equivalent of the English which you used? A. Yes; I would generally make my correspondence as short as possible, using as few words as possible, and using the words that conveyed my idea when I communicated with the Government.

Q. Well, now, perhaps you will kindly answer the question? A. What is the question?

Question repeated.

Q. The words "*obras*" and "*trabajos*," do you know what they mean as used in Colombia by railroad constructors? A. I do.

Q. Please state the meaning to the Commission? A. Those words were used generally to express and apply to the work being done on construction, both manual—that is, manual work performed, and in works in which material had been used. That is, "*trabajos y obras*." That is, a combination of manual labor with the material for forming the structures; for instance, I might say in building a bridge, we might call it an "*obra*"; ordinarily speaking, "*trabajos*" means—

(674) Q. You are not answering my question. I am quite as willing as anybody to listen to a dissertation on the Spanish language, but we want answers; we do not want to waste time.

Mr. STINE: You are getting very particular all of a sudden as to time; I object to this witness being interrupted.

The WITNESS: I will give you the meaning of the words, as they are used in various parts of Colombia where I have been.

Mr. ROBERTSON: I am not asking now for the meaning of the single or individual words; we want the meaning of the phrase, "*obras y trabajos*." A. "*Obras y trabajos*," as used in Colombia, as I understand them, apply to works performed by—

Objection by Mr. Stine to the witness reading a dictionary explanation from the paper in front of him.

The WITNESS: I took these notes in order to refresh my memory

The CHAIRMAN: Did you look up the explanation of the words in a dictionary?

Mr. Stine objected to the witness refreshing his memory when testifying from his own knowledge. It is not necessary for any man to refresh his memory by looking at his notes when testifying to his knowledge of anything.

The witness then said that he did not require to look at the paper.

Mr. ROBERTSON: Q. Mr. Doughtery, is it necessary for you to look at those notes in order to state what in your opinion and knowledge is the meaning of the phrase "*obras y trabajos*"? A. No, sir.

(675) Mr. STINE: Q. Under what circumstances were these notes made? A. I made them casually yesterday or the day before in pencil while listening to the testimony, and I subsequently copied them out in ink. I referred also to the dictionary for the purpose of—

The CHAIRMAN: Q. What authorities did you look at? A. I looked at Worcester in order to see the meaning of the English word "work," so that I could express myself properly.

Mr. ROBERTSON: Worcester is not Spanish. A. I understand in Spanish what they mean, and I wanted to express myself clearly in English; that is why I referred to Worcester.

Mr. STINE: Q. Your knowledge of these words is profound and comprehensive, is it not? A. As they are used in Colombia, yes; from my experience of the way they were used there. I had an idea what they were in Spanish, but simply used Worcester in order that I might express myself in English. If I thought there would be any objection to this I would not have done so.

Mr. STINE: You are not being accused of doing anything wrong, Mr. Dougherty; it is all right; it is not exactly proper; that is all.

The WITNESS: My understanding of this phrase is that it implies labor combined with materials for forming a structure of any kind; that is the meaning of this phrase as used in Colombia; that is my understanding of it.

Mr. ROBERTSON: Q. Now, take separately the word "*obra*," what does that word mean with respect to rail-(676) road construction in Colombia? I wish you now to testify to the meaning of "*obra*" as separate from "*trabajos*." A. As we used the word, to my understanding the word was used in Colombia, the word "*obra*" for the purpose of defining work or labor combined with materials—the forming of a bridge, the forming of a roadway, and work in general of that character.

Q. Has it only relation to superstructure as distinguished from the groundwork?

Mr. STINE: That is not leading the witness, is it? I am not objecting; go ahead.

A. Well, oftentimes these words are used synonymously, ordinarily speaking, when we spoke of grading or clearing or earthwork or any work of a similar character. When work was generally designated as "*trabajos*" and the word "*obras*"—

Q. Please take the words "*los obras.*" A. My understanding of the words mentioned is that labor combined with materials made "*obras;*" for instance, we would call a bridge "*obra,*" and if there were two of them it would be "*obras.*"

Q. Now take "*los trabajos.*"

The CHAIRMAN: Q. Try and draw the distinction if you can. A. I cannot find any distinction according to my idea. I am giving you my impression, not as a Spanish scholar. I am giving you my impression as I found the words there.

Q. Then, if there is no distinction between them, what was the import of using them in conjunction?

(The Witness:) We use them for expressing grading, superstructure and materials, and the labor to do the work.

Mr. ROBERTSON: Q. Well, do you see, or do you not see, a distinction in English between the grading, filling and superstructures, etc.? A. No; I would say that is the (677) work of the road; or do you mean divided, the grading or superstructure—

Q. I am asking whether in English you see a distinction—

(Question repeated.)

A. I call one earthworks and the other superstructure.

Q. There is a distinction, then? A. There is, certainly.

Q. Then as to that distinction does it disappear when you express yourself in Spanish in Colombia? A. I would express that as "*trabajos*" or "*obras,*" or "*obras*" and "*trabajos*" both.

Q. As between "*obras*" and "*trabajos,*" in the Spanish language used in Colombia, does not one refer to earthworks more frequently than the other, and does not one refer more to superstructure than the other?

Objected to by Mr. Stine as leading, and, after discussion, the chair stated that he saw no objection to the ques-

tion, as Mr. Robertson was trying to get out a clear answer in the best way possible.

A. I think not. I do not think one refers more than the other to one subject; for instance, I go out to the works, and I may be looking at a bridge; then one of the engineers comes into the office and asks: "*Como estan las obras arriba?*" that is, how is the work going on above?

Q. That is not what I am asking you; you seem to get around the question every time. I am asking you if you see a distinction between the word "*obras*" and the word "*trabajos*," both being used in connection with a superstructure or grading work? A. I do not see any difference.

THE CHAIRMAN: Q. I do not recollect your answer to the chair's question in regard to the use of the terms in con-
(678) junction; does it emphasize it in any way? A. I dont think it would.

Mr. ROBERTSON: Q. After listening to this discussion, do you desire to change your testimony with respect to the meaning of the phrase "*obras y trabajos*," as employed in Colombia in connection with railway building? A. No.

Mr. ROBERTSON: He is your witness, Mr. Stine.

Mr. STINE: Thank you; I do not wish to put in any cross examination.

The CHAIRMAN: We congratulate Mr. Dougherty, and thank you for your testimony.

Mr. ROBERTSON: I will now call Mr. F. J. Cisneros.

Mr. CISNEROS was called to the stand, and the usual oath administered by the chairman.

EXAMINED BY MR. ROBERTSON:

Q. Please state your full name, your age, your place of residence; that is, what place you are a citizen of, and your occupation? A. My name is Francisco Javier Cisneros; 60½ years of age—60 years last December; I am an American citizen; my profession is a civil engineer. It would be very hard for me to state my residence, because sometimes I am in London, sometimes in South America, and sometimes here. I call myself an American citizen, with residence in New York.

Q. Where were you born? A. Santiago de Cuba.

Q. How long did you remain in Cuba? A. I remained in Cuba, in Havana, until November, 1868.

Q. What language did you use in Cuba? A. Spanish.

Q. So that you were really brought up in a Spanish

speaking community, and your parents are Spanish speaking? A. I was; they were.

(679) Q. How long have you been a civil engineer? A. Since April, 1857.

Q. Why do you fix that as the date? A. Because that was when I graduated.

Q. Where did you graduate? A. In Havana.

Q. Then you graduated as a civil engineer in Havana at that time? A. Yes, I did.

Q. How long have you been in the active practice of your profession? A. Since then, excepting four years, when I was engaged in the Cuban revolution, the last time

Q. Have you ever had any experience in the construction of railroads? A. I have.

Q. Please state when you had your first experience, and where, and how long continuously you have been engaged in railway construction? A. My first experience was surveying as an assistant engineer to two American engineers in Cuba, on the north coast, from La Mulato to Pina del Rio. That lasted six months in 1857. My second was as assistant engineer in 1858, on the Sagua la Grande, for about 8 months, more or less, on construction. My third was on the construction of a branch of the Savanilla Railway (Cuba). My fourth was on another branch of the Cardenas Railway. My fifth, as chief engineer, and afterwards manager, on the Trinidad & Sancti Espiritus Railway; in Cuba. My sixth experience was on the Western Railway, from Havana to Pinar Del Rio, first as chief engineer, and afterwards as chief engineer and manager.

Q. State when you were in charge of construction. A. Chief of construction since 1858 until 1867 on the mentioned railways, and also manager for some time on the Trinidad & Sancti Espiritus and on the Western railways. Next, I was consulting engineer on the Caibarien and Sancti Espiritus Railway. At this time (Oct., 1868), the the revolution broke out, and I left. In 1871 I was appointed in Peru to inspect and report on the works of the Cerro de Pasco Railway. At the end of 1874, in Colombia, I started the Antioquia Railway. I was called by the An-
(680) tioquian Government to take the railway into my hands. In 1878, at the request of the then elected President of the Republic, General Julian Trujillo, I took the concession for the Cauca Railway, and began work about September 15, 1878.

Q. Between what points? A. Between Buenaventura and Cali; that was the extent of my concession.

Q. How much of that road did you build? A. Practi-

cally 30 kilometers; that is, 27.100 had been completed, and about 3 kilometers of the roadbed without bridges. In 1881 I entered into an agreement with the Colombian Government to build a part of the Girardot Railway; that was not a concession, it was a contract. In the same year I took the concession for the La Dorada Railway, by special act of Congress to the Executive, on certain terms. At the end of 1884 I purchased the Bolivar Railway; in 1888 I made an extension of said line, and during 1892 and 1893 I built the pier.

Q. What pier was that? A. The pier belonging to the Barranquilla Railway and Pier Co., ltd., in Puerto Colombia, Sabanilla Bay.

Q. Is it a large or a small pier? A. It is a large pier; it is 4,000 feet long.

Q. Built of what material? A. Steel.

Q. In point of fact, is it not one of the largest piers in the world? A. It is; I think it is the third as regards length. Since that time I have been acting as General Manager and Director of that Company, and at intervals as Managing Director also; I mean one of the Managing Directors of the Colombian Transport Company, and I have also had in my charge lately the improvement of the Magdalena river on behalf of the said Company. I do not remember anything else at present.

Q. Have you ever read the agreement for the determination of the differences existing between the Government Colombia and the Cauca Company in connection with the contract for the construction of the Cauca railway, which (681) agreement is dated Jan. 4, 1897? A. Many times.

Q. I wish you to look at the second article of that agreement in Spanish and state what the meaning of the word "*obras*" is as used there. I am referring to the word as it appears the first time in article second. A. It is used in a generical way, as the "*obras y trabajos*" of a railway; that means the embankments, cuttings, bridges—in fact it means all the works.

Q. Does that word "*obras*" signify concrete or other work? A. Concrete.

The CHAIRMAN: In what sense do you mean to use the word "concrete?"

Mr. ROBERTSON: In its material sense.

Q. Now, come down to the words "*las obras y trabajos*," as found in the latter part of the article, and state what those words mean in their connection. A. Well, they mean the works and structures.

Q. Is that a physical or a concrete sense, or does it re-

fer to something not concrete and physical? A. It refers to something concrete.

Q. Now, come down to the third article. Please read that article and translate it into English. A. ARTICLE THREE. "The Government and the Company accept in advance as a just and only indemnity a sum which shall be equivalent to what the Company shall prove they disbursed in every kind of work done by it in the construction of the said railway, and for rolling stock, rails, and so forth, imported for the use of such railway."

The CHAIRMAN: Q. What Spanish word is used for disbursed? A. I find the word is "*costeado.*"

The CHAIRMAN: Q. Do you translate the word in that way? A. The word "*costeado,*" as I understend it, translated into English means expended or disbursed.

(682) Mr. ROBERTSON: Q. Do you mean the entire cost of everything as an enterprise? A. No; not of the enterprise, but of the work.

Q. That particular work? A. Yes.

Q. Do you mean the concrete works or the general work embraced in the enterprise? A. I mean the concrete work.

Q. Now give the English equivalent of these words, "*costeado en las trabajos y obras ejecutados.*" A. Disbursed on every kind of work done, or on the completed works.

Q. In what sense do you use the word "done?" A. As performed, executed.

Q. Do you mean completed works? A. Works completed or executed.

Q. Now state whether the words "*compruebe haber costeado en las trabajos y obras ejecutados*" refer to the money expended on the concrete or physical works, or on any other kind of works, in reference to these concrete works? A. Yes, they do; the idea of executing work of this nature involves precisely technical, physical and administrative works, but only local; when an expense is given outside of the local works, that is a question for the enterprise, and it is an entirely different thing; but, for instance, if on account of the climate it is necessary to keep a hospital, certainly a portion of the cost of that hospital has to go to the works; if I were called upon to estimate the cost of a railway, I would have to look at the money to be spent; otherwise, all I would have to do would be to measure the quantity of materials to be moved, and I could, of course, calculate how much it would cost; that is what I mean when I say physical and technical works.

Q. What I want to get at is whether the word "*ejecutados*" refers only to a completed physical work, or to the completed operations conducted in the course of the administration of an enterprise? A. Not at all; it refers also to the incomplete executed work.

(683) Q. I know, but are they physical works, or such work as the mental operations or financial operations of the enterprise? A. That is entirely a separate division in my opinion.

Q. Now consider these three articles and state to the Commission whether the third article provides for the payment, for instance, of the cost of the general enterprise, or the expenses of the enterprise, or its agencies, or for anything else; and, of course, if for anything else, state what that is? A. In my opinion it does call for something else, and that is, the local work and the rolling stock imported by the Company for the use of such a railway.

Q. Now, on what words in the article do you base your understanding of these provisions, in this respect? A. "On the works done."

Q. Please give the Spanish words and show their English equivalent? A. "*Obras ejecutadas por ellà en la construccion de la expresada via ferrea;*" that is, the works executed by the Company in the construction of the said railway, and in the rolling stock and tools imported by the Company for the purpose of the same railway.

Q. Is there any reference in that article to anything to be paid for by the Government except the physical work? A. Not to my knowledge.

Q. What is the purpose of the use of the word "*ejecutadas*"? A. It means done; to show that it has been done.

Q. In the sense of "completed," do you mean? A. Yes, completed.

Q. Do you mean to say in the sense of finished or completed works? A. Yes; finished work.

Mr. STINE: Q. Let us have this clear; do you mean by finished, as far as the work has progressed; or do you mean the completed work, entirely finished? A. No; I mean the (684) work that has been done; for instance, this Company has executed works beyond San Jose, and although these are not completed works, because they are not continuous, I call that work executed.

Mr. STINE: That is all right; I wanted that clear.

Mr. ROBERTSON: Q. Merely as far as it goes, you mean? A. Yes.

Mr. Cisneros said he would like to refer to a dictionary, which Mr Schramme laid on the table, wherein the word "*obras*" was clearly defined; the book was then produced

and Mr. Cisneros then read a Spanish quotation from the book called "Diccionario tecnico legal y administrative de los Ferrocarriles Espanoles, by Don Benito Vicente Garces, Madrid, 1875, Page 385."

Mr. ROBERTSON: Q. Now, will you please give us the English of that? A. Perhaps Mr. Miiler can do it better than I.

Q. I prefer to have you read it. A. "Works for the object of getting and maintaining a level and the construction of railways within certain limits, clearing the obstacles that may be found on the surface of the groud, currents of water and other construction which it is necessary to execute previous to that which works and constructions (*obras de arte*), has been classified into two general groups, namely, earthworks (*obras de tierra*) and structures (*obras de arte*). The earth works comprise embankments and cuts. Those of the structure are generally bridges, trestles, ditches, culverts, syphons, viaducts, tunnels and retaining walls."

Q. Now, do the words "*obras y trabajos*," as used in the 1st, 3rd and 5th articles of the Convention carry the (685) meaning of physical works, as found in the articles you have just mentioned from the dictionary? A. Yes.

Q. Now, look at the 5th article? A. I am looking at it.

Q. Read the first sentence of the 5th article. A. "The Government of Colombia and the Cauca Company hereby authorize the Commission that shall be constituted in the manner hereinbefore indicated, to fix the indemnity already mentioned, and such Commission shall appraise all and every kind of work done and material hereinbefore referred to."

Q. You have read this first sentence in English; state whether the English used by you is a true and correct translation of the same sentence as it appears in Spanish in the original Convention? A. It is

The CHAIRMAN: Q. What is the word used for work in that Spanish document? A. "*Trabajos*." For that reason I have translated "*obras*" as "structures," and "*trabajos*" as works and materials referred to.

Mr ROBERTSON: Q. Does that sentence refer to any work or works not of a material nature? A. Not at all.

Q. Do the three plural nouns, "*obras*," "*trabajos*" and "*materiales*," found in that sentence, refer to anything not of a physical or concrete nature? A. No.

Q. Please read the next sentence of that article 5th

down to the words "and appoint experts." A. "For such purpose, and in order to thus determine the consequent indemnity, the Commission shall examine and consider the books of the Cauca Company in New York, the documents that the Government of Colombia and the Company may present in support of their respective rights, and such as the Commission may demand. It shall inspect on the ground all works of every kind done on the railway and (686) the rolling stock, in order to make the necessary checks and verifications for the determination of the facts, which are to serve as the basis for fixing the indemnity, and shall have the right for such purposes to examine witnesses and appoint experts," and so forth.

Q. Now, I call your attention to the provisions of the sentence which you have just read in part, the provisions with respect to the examination of the books and accounts of the Cauca Company in New York, and the next, respecting the inspection on the ground of the works executed there. Please state whether these provisions are imperative; that is to say, whether the verb is used in the imperative mood in each case. A. It is; both the Spanish and the English are correct. If you will allow me a remark (The Chair: Certainly), I wish to say that it cannot be otherwise, because the sentence closes, saying: "In order to make the necessary checks and verifications for the determination of the facts which are to serve as the basis for fixing the indemnity." The facts are there, and cannot be checked unless we go there.

The CHAIRMAN: I would like to ask if any one can give the Commission information as to who actually drafted this Spanish agreement at the time of the drawing up of the final Convention?

Mr. SCHRAMME: I drafted it, with Mr. Canon. He was sub secretary. We drafted it in the rough and submitted it to the Minister, and the Minister sent it to the Notary.

At 12:30 P. M. the Chairman, at the request of Mr. Stine, adjourned the meeting for 10 minutes.

The meeting was called to order at 12:40 P. M.

Mr. ROBERTSON: I think we will now turn Mr. Cisneros over to the kind mercies of Mr. Stine.

CROSS-EXAMINATION TAKEN UP BY MR. STINE:

(687) Q. You stated that the meaning of the words "*las obras y trabajos*," about which so much has been said, referred to the physical or concrete work? A. I did.

Q. Well, now, how do you reconcile that to your statement that the administration work in the locality should be included in the "*obras y trabajos*"? A. Because we cannot consider the work in any other way. A cubic yard of earthwork done cannot be estimated by labor alone. If we are going to estimate the price or value per cubic yard, we know that we have to have an engineer to mark out the work that the laborer has to do. We have to consider the physical work, and that somebody else has be there to keep accounts, to pay the men, etc.; so that these three items are what, in my opinion, are to be considered.

Q. How about the hospital? A. I mean nothing but the local expenses necessary to carry on the work.

Q. Where is there any well-known foundation for this method outside of your own mind? A. That is the rule everywhere. If you call a contractor to do a certain work, he would consider the cost per cubic yard, so much for material, and, of course, all that is considered necessary by him in the way of local expenses, in the way of carrying on the work, but nothing outside.

The CHAIRMAN: Q. Within what radius do you call local work? A. In the radius of the work.

Mr. STINE: Q. Now, consider the fact that this original concession was granted to an American contractor, and he was empowered to organize a Company in the United States, is it not a fact that this gives him the right, in your opinion, to keep the books in the United States and keep (688) an office there, instead of in the place where the work is done? A. No; I kept my books there.

Q. I did not ask you that (Question repeated). A. I did not do that—

Q. I did not ask you that; I am asking you whether, considering that the Government granted the concession to an American Company—

Mr. CISNEROS: I beg your pardon—an American gentleman!

Mr. STINE, (continuing): The Concession gave him the right to transfer the same to an American Company; considering that it gave the right to an American gentleman, does not that, in your opinion, carry the right with it to keep the books and the offices of the Company in the place where the Company had its being? A. The books of the Company; yes.

Mr. ROBERTSON: Are you asking for a legal opinion.

Mr. STINE: Q. Does not the Concession provide that the offices of the Company shall be wherever the Company chooses to have them? A. Yes.

Q. You say "*obras*," refers to physical work only?

A. So far as I have said; I also included technical and administrative local expenses.

Q. Is it not a fact that the word "*obras*" is often used as follows: "*las obras de Calderon?*" Is not the word "*obras*" used in that sense? A. Yes.

Q. So that the word "*obras*" is also applied in Spanish to mental work? A. In some cases.

Q Now, suppose I went to Mr. Robertson, for whom I have learned to have a great respect, and asked him to do some legal work for me, and I told him "*yo le pago a* (689) *Vd por sus trabajos*," namely, "I will pay you for your work;" is not that correct Spanish? A. It is correct.

Q. So that it appears that the words "*obras*" and "*trabajos*" have not only a limited meaning or application to physical and concrete work, but may also be used in Spanish when reference is made to mental work? A. That is entirely different.

Q. But they can be used in that way?

Mr. ROBERTSON: You mean that where we are speaking of mental work you can use the words "*obras y trabajos.*"

Mr. STINE: Q. Is it not a fact, Mr. Cisneros, that when you use those words generically, they correspond in substance to the English words "work" and "labor?" I am getting now at the meaning of those words as compared with English words. A. If you will allow me to say so, I understand that if you are speaking of the books or works of a man, if it is more than one you say works, and if it is only one, you say it is the work of that man, but if we are speaking of the works of a railroad, you cannot use the word work; you have to say works; that is the difference I find.

Q. Suppose it were a church you were building, what word would you use? A. I should say, "this is a fine work."

Q. You would say work? A. Yes; in that case.

Q. And the bridge of a railway, would it be a work? A. One bridge.

Q. So that "*obras*," when it refers to works, is used in the sense in which "works" is used in English, meaning a complete work? A. Yes.

Q. Is it not a fact, assuming that to be so, when we use the words work and labor, we are using substantially (690) the same words in English as *obras* and *trabajos* in Spanish?

The CHAIRMAN: In Mr. Cisneros' reference to the church, might it not mean the execution of the work, both

physical and mental; might it not refer to one or the other?

(WITNESS:) I think it combines both, the same as a railway; you cannot look at a railway without considering the location and the surveying.

Mr. STINE: That is all.

Mr. ROBERTSON: Q. As an engineer, if you were called upon to estimate as to the cost on the construction of a railway, such as the Cauca road, would you include in the cost of the road—in the cost of the construction—the expenses of running its general offices, or any general expenses connected with the enterprise? A. Not for a moment; I would consider that the money in cash needed to carry on the works was there, and I would not consider any financial or economical part of the Company's expenses. That is another thing entirely.

Q. So far as your experience has gone, is it not a fact that when a railroad enterprise is incorporated it is for the purpose of future traffic or future operations which shall be profitable; is not that the general purpose of railroad construction? A. Yes.

Q. Is it not a fact that part of the expenses of a Company owning or building a road, in the way of expenses for administration, are supposed to come back from the future earnings of the enterprise, or from increased values which may accrue to the franchise? A. Yes.

Q. So that these expenses would not be chargeable, in your opinion, to the cost of construction, so much as against (691) the general future of the Company? A. Yes; to the general future of the Company.

Q. Well, I understood you to say on cross examination that you would include some of the administration in the cost of construction; will you explain that a little more in detail? Q. For instance, I say the estimates we have made for the Cauca Company's works, according to our data, I have allowed 32% of the whole cost, which I think covers all the expenditures outside of the physical work, because, as I said before, it is necessary to have an engineer to lay out the track; it is necessary that the engineer should mark the work to be performed; then it is necessary to have for the physical work laborers, and a man to look after them; then it is also necessary that the accounts of these men be kept in the offices, and that a reliable person be employed to pay them, make out the pay-rolls and prepare all vouchers for the cashier; all that I call administration expenses.

Q. Well, referring again to the use of the words "*obras*" and "*trabajos*," as found in the Convention of Jan. 4, 1897, suppose that, as an engineer, you were asked

to estimate upon what would necessarily be the expenses of producing the "*obras*" and "*trabajos*," referred to in that Convention, would you, in your estimate, include any Company expenses for offices in New York, any traveling expenses of the president or other officers of the Company, or expenses of placing bonds and raising funds for the enterprise; would you include any discount upon those bonds or stock, any commission for raising the funds; would you include discounts of any kind on paper or other representative of money? A. I would not, at all; I would not deal with those points; I, in my estimate, would consider that the money was ready to carry on the work. How that money was obtained is another question, appertaining to the economical department of the Company.

Q. Would you consider official salaries for officers (692) when not personally engaged on the ground on the work of construction? A. Not at all, and I have never done so.

Q. During the course of the examination of Mr. Carter was reference made by the Company's counsel to a report made by Mr. Cherry? A. Yes.

Q. Do you remember any reference in the report of Mr. Cherry by way of contrasting what you had paid or what you had expended in connection with your work upon the road with what he claimed the Cauca Company, under his management, expended and desired to receive back? A. I have made a memorandum, and have it here with me.

Q. Please look at the memorandum, and state whether the quotations from Mr. Cherry's report, as used during Mr. Carter's cross examination, embraced the truth? A. While the report is dated Dec. 1, 1893, Mr. Cherry said the railroad was measured from Buenaventura to San Jose on December 10th. Expended to December, 1893, $431,390, while deducting the amounts belonging to operation, deposit, etc., for construction and equipment, there only remains $202,870.43. Now, he says, on the part of the road constructed by Cisneros and the Government: earth excavation and fill, 164,564 cubic yards; hard, for blasting, 29,158 c. y.; total, 193,722 c. y. Mr. Cherry, however, is very much mistaken, as I am going to prove it:

Mr. Stine called attention to the fact that the report stated on the part of the line constructed by Mr. Cisneros and the Government—that refers only to Cordova.

The WITNESS: I take that to have been the whole of the road built by me.

(693) Mr. STINE: Q. Did not the Government claim to have built something?

(The WITNESS:) In the report of the Commission of January, 1897, they say so; but that assertion is completely contradicted by the liquidation made by Mr. Pena and Mr. Conwell in 1885, wherein it is stated that I delivered up K. 27.100 with the track, and three kilometers ready to receive track, etc. As far as my knowledge goes, the Government built nothing. I do not know from any personal knowledge I have before me the receipt given by Mr. Cherry on Jan. 1, 1891, where he then testifies to having received less roadbed than I left down; for instance, the 3 kiometers that I left down from K. 27.100 ahead, in Mr. Cherry's receipt are mentioned as only 2 kilometers 650 meters. For that very good reason I infer that the Government did nothing.

The CHAIRMAN: It does not appear to the chair that any rebuttal is necessary.

Mr. STINE: I have made no attack on Mr. Cisneros, and I do not think it is very material.

Mr. ROBERTSON: I think that, under the circumstance, we should have Mr. Cisneros' explanation, inasmuch as Mr. Cherry's assertions are already in the record.

No objection being made, the witness continued:

(The WITNESS:) As a matter of fact, instead of 193,722 c. y., I moved 481,635 c. y., as follows?

From Buenaventura to Cordova,	cuts	and	fills,	270,947	cubic	yards
" Cordova to K. 27.100,	"	"	"	119,661	"	"
" K. 27.100 to K. 29.750,	"	"	"	91,027	"	"
				481,635		

It is true that I received more from the Government in my liquidation than I am allowing now to the Company, (694) but the reason is that the two contracts are entirely different. My contract was for a lump sum, and it is to be remembered that there were no surveys done, and nothing had been done in railway matters in the country except a little piece in Sabanilla and on the Isthmus. The Government offered me, for building the Cauca Railroad, the same amount of money that they offered to the other Concessionaries before me. I made a careful survey, and in good faith had the location made very carefully, thereby reducing the distance, and as $6,000,000 was the fixed amount, by reducing the distance, the price per kilometer increased. The price paid by the Government in that liquidation was not the price of the agreement, because of this $6,000,000 the Government only had to pay one-half, and I was bound to put up the other $3,000,000; but when the rescission took place the Government had to purchase my part at its own valuation. I had built my part, and for that reason

they paid me at the rate, outside of the rolling stock, of $52,639.24 per kilometer, being equal to $40,468 in gold, per kilometer. The money was paid part in silver and part in paper. Mr. Schramme, however, thought that the exchange was 80% at that time, and I do not agree with him, inasmuch as the money was paid in paper and in monthly installments of $6,000, it took some time to reimburse me. The Company has not an agreement like mine, and yet, exclusive of rolling stock, it has been paid already at the rate of $34,923. Besides that, when I was called to advise the Government on this special matter—

Mr. STINE: Hold on, please; I object to that.

(WITNESS:) Very well. This is a statement of what the work cost me:

(695) COST OF CONSTRUCTION OF THE CAUCA RAILWAY.

Items.	Kilometer.	Cost. $	Average per Kil. $	Per cent. per Kil.
Preliminary Survey.....	137.	$54.800	$400	1,359
Final Location.....	53.63	39.495	736	2.502
Clearing.....	32.25	14,266	443	1.505
Grading.....	29.21	296,182	10,139	34.452
Bridges.....	27.44	91,588	3,338	11.342
Ditches.....	27.44	14,953	545	1.852
Tanks.....	27.44	4.974	181	0 616
Superstructure.....	27.44	208,514	7,600	25.826
Pinal Bridge.....	27.44	37,126	1,352	4.596
Filling Bridge No. 13...	27.44	51,710	1,770	6.016
Pier.....	27.44	80,235	2,924	9.936

Total per Kilometer, Silver.... $29,429 100 per cent.
Gold @ 15 per cent. Pm..... 25,014

Making a total cost, including the pier, of $25,014, gold, per kilometer, and deducting the pier, it comes to only $22,472, gold, per kilometer; so when I have allowed the Company $21,520, for construction, the accuracy is checked by the cost of my own work, because the difference between the two items is of only $952 per K. Comparing the estimated price of $21,520 with the amount already paid to the Company by the Government, viz.: $366,132.-61—that is, the price per kilometer already received by the Company amounts to $34,923 gold—and the Company has realized a net profit of $13,403 per K., or, in 9 K. 866, $132,233.99. I confine myself to construction work, because the convention only speaks of the money expended on that work and on equipment, which in the present case

is very small, and I have to confine my calculations to the terms of that convention.

The CHAIRMAN: May I ask why your contract was rescinded?

(WITNESS:) Now, you ask me why this concession was rescinded; well, I will tell you. Colombia is a new country; it is not well known, and, although the country is very good and rich, if immigration cannot be (696) established, it will take many years before capital finds inducement enough to go there in the proportion required to promote enterprises, which at the outset, under present conditions, cannot develop sufficient traffic. The fact is that the country is 500,000 square miles, while the population is only four million. Then, I could not obtain on a large scale any capital, but the capital that I had was private capital, and was expensive, and, besides that, there was the revolution of 1885, and then I found myself without the subsidy of the Government, which was withdrawn during the revolution; without traffic, without any support from outside; and then I proposed to the Government the rescission of the contract, and the Government accepted. The Minister of Public Works and myself wrote out the draft of the rescission, as Mr. Pena knows, and on very friendly terms we concluded the whole affair, and I was paid.

Mr. ROBERTSON: Q. Was the amount which it cost you to raise your money reimbursed to you by the Government? A. No; nothing was; if I remember right, they paid an amount of less than $20,000 for delays on account of interest, or something similar; I believe it was for interest.

Mr. STINE: What was the total amount paid to you? A. On that point I made a mistake when I said $1,779,661. Mr. Schramme's figures, $1,780,000, are correct.

Mr. STINE: Q. Silver, I suppose, which was worth just about as much as gold? A. The difference then was about 15%; I am now going to refer to the different items that were included in this liquidation.

(697) Mr. STINE: Q. I wish you would explain now, when you say that you received $1,780,000 for the recission, and, in view of the fact that you built less than 30 kilometers, 20 of which were completed, and on 10 of which no traffic had ever taken place, to explain how you received at the rate of $57,000 per kilometer, assuming that you built the whole of the 30 kilometers? A. There is no assumption, because I was paid $1,780,000, but that was not all for the track constructed; only $1,427,000 was for track, and it is here in the official liquidation signed by Mr. Pena and Mr. Conwell, and of this $1,427,878 I received ⅔ in silver at 15 per cent. and ⅓ in paper money, which I thought would be

fairly calculated at 100 per cent; that would bring the figure of the payment to me at a higher rate, viz., $40,000, gold, per kilometer.

The CHAIRMAN: Q. On what length of road did you calculate? A. 28.114 kilometers.

Mr. STINE: You made a mistake in your calculations. It is $44,000, gold, per kilometer.

Some discussion then ensued, Mr. Cisneros stating that Mr. Schramme was not dealing with the right figures.

The chairman wished to arrange the procedure of the Commission by making up a programme for the course of the week, and inquired how many witnesees remained to be examined.

Mr. ROBERTSON: We may not introduce any more after Mr. Cisneros, but we want a copy of the "Diario Oficial," which contains the certificate which was witnessed by young Mr. Schramme, and we desire to put it in.

Mr. STINE: What is the document?

Mr. ROBERTSON: It is an inventory. If you are willing to take it as it is—

(698) Mr. STINE: We will be willing to meet you in that matter if you will put in the "Diario Oficial"; we will consent to the accepting of it in evidence.

Mr. CISNEROS: I have not been able to liquidate the difference between the value of the inventory delivered to the Cauca Company and the value of the inventory handed back by them, because the prices are not in the first inventory.

Mr. STINE: We do not think we shall have to introduce more than two witnesses, but I am not sure of that. If these gentlemen get through to-morrow morning, we will go on with our evidence to-morrow morning.

Mr. ROBERTSON: I do not think I will take more than ten minutes more.

Mr. STINE: I should like a copy of Mr. Cisneros' evidence by to-morrow morning, because we will have to rebut his evidence on several points.

It being 1:50 P. M., the Chairman declared the meeting adjourned until 9:45 the next day.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Twenty-third Session.

(699) Held at 30 Broad street, New York City, on Thursday, August 19, 1897, at 9:45 a. m.

Examination of Mr. Cisneros continued—Mr. Ponce de Leon called and sworn on behalf of the Company.

Present—Commission, Attorneys and Counsel as before.

The chairman called the meeting to order at 10 o'clock.

EXAMINATION OF MR. CISNEROS CONTINUED BY MR. ROBERTSON:

Q. Will you kindly state whether or not you are a member of any of the engineers' societies in this country or abroad. A. I am, both here and abroad; the American Society of Engineers here, and the Institute of Civil Engineers in London.

Q. How long have you been a member of those societies? A. Of the American Society since 1872, and of the Institute of London since 1884.

Q. Now, have you made any estimates as to the cost of the Cauca road since you were here? A. I have.

Q. Please refer to your estimates, and give such testimony as to the cost of construction as you take from that. A. I think I stated yesterday that I removed 481,635 cubic yards in all from Buenaventura to when I left the works. Now, instead of 20 kilometers that Mr. Cherry stated I (700) built, computing the roadbed for one and one-half kilometers, that would be 28.600 kilometers. Instead of the Cauca Company having built 16½ kilometers, as computed, they only built 9.866 kilometers.

The CHAIRMAN: Q. That is equivalent to finished road? A. Yes; finisned road. The small amount of conglomerate that Mr. Cherry said I removed is not warranted; here is my estimate in that book, on page 51; that section, from Buenaventura to Juntas, has the following: 218,528 cubic yards at 50c.; hard pan, 41,826 at 60c.; loose rock, 52,533 at 70c.; solid rock, 32,962 yards at $1.00; cemented gravel, which is the conglomerate, 349,383 at 80c.; so, you see, it is about 50% of the whole in the estimate, and from Cardova to Caballete the same proportion was maintained in the part of road we built.

The CHAIRMAN: At what price? A. At 80c.; the solid rock at $1.00; the conglomerate at 80c., but you will see that the solid rock and conglomerate is about 50 per cent., which I estimated; therefore, there is no warrant

for that, and I will prove after, that this estimate comes very close with the entire cost of the work done by me.

The CHAIRMAN: Q. Is this figured in gold? A. No; in silver.

Mr. ROBERTSON: Q. I was going to ask you whether the actual cost approximated closely to the estimated cost? A. I should ask for the book that is in evidence, the very statement that Mr. Stine was kind enough to produce the other day; I am going to refer— Now, in this estimate, there are bridges and culverts, station houses, which are (701) out of the question,—because they were not built, houses for guards (not built), clearing and grubbing—railway-track—electric signals (not established), telegraph (not built), contingencies, expenses of administration, that is all; now I am going to call for the figures which we are comparing, and here is a statement of the actual cost, and you will see how close it comes: bridges and culverts, $1,350,706.89; railway track, $2,242,125.68; rolling stock I leave out; clearing and grubbing, $12,914.75; added, these make $3,605,747.32; then, let us add the 20% to that for contingencies and administration— This estimate is for 137 9-10, say, 138 kilometers; the 20% amounts to $721,494.64, and, added to the $3,605,747.32 above, makes $4,327,241.96; divided by 138 kilometers, makes the price per kilometer $31,346.

The CHAIRMAN: Q. I thought your estimate thirty-two thousand and something? A. Well, I was mistaken about it then; $31,346—that is my estimate.

Mr. ROBERTSON: Q. Mr. Stine suggests that you are leaving out one-half of the items in your estimate. A. It is not so; what I am trying to do is: here is the estimate for the work I have done there, and here is the estimate I made for that work; I have not done these other things which I have left out. Now, the actual cost of these works has been 31,346 per kilometer; now I see where the mistake is in the price of $31,346 a kilometer; that amount is in silver; I will reduce that to gold, and at 15% it makes as the actual cost of this, $26,645.

Q. Now, you have been speaking of the estimates; now you are coming to the actual cost? A. Yes. The actual cost; that is, the price for surveying, location, clear- (702) ing and grubbing, earthworks, bridges, tools, superstructures, the large bridge at Pinal, which was 646 feet, the filling of that, which cost a great deal of money, and pier and general expenses; that was $29,429.10 per kilometer in silver; in gold it makes $25,014, and taking off the pier, just to make the comparison equal, it comes to $22,472 per kilometer; that is for road construction; there-

fore, you see that the estimate was $26,644, and the actual cost $22,500, in round numbers; that there is a difference of about $4,000 in the estimate.

Q. That is, the estimate is about $4,000 per kilometer in excess of the actual cost? A. Yes; the reason for this was, I always had an engineer ahead locating and changing a good deal; so that I saved by improving the location a good deal of work, and, as a matter of course, it saved time and money.

Q. So that in this way, by locating the road properly, you saved a good deal? A. Yes.

Q. That accounts for this saving of about $4,000 per kilometer? A. Yes; therefore, I congratulate myself for this opportunity to compare the figures; otherwise, I would never have done it. Now, we come to the liquidation of my rescission—

Document—Cost of the portion of the Cauca railroad built by Mr. Cisneros from Buenaventura to Kilometer 30, received in evidence and marked "Government's Exhibit No. 6."

(Witness continuing:) Then, coming to the liquidation of my rescission—the amount allowed; Mr. Schramme objected to the 100% exchange, but I cannot reduce that; I have been thinking of it over and over again; in the first place, the exchange at that time annoyed us a good deal by its constant fluctuations, and, in the second place, those $500,000, the balance of the liquidation, were paid to me at the rate of $6,000 a month, and even then, in 1889—(703) about May, 1889—I had yet a large per cent. of that money due, and sold it at 15 per cent. above the regular discount in the market; so I think that could not be calculated fairly at less than 100 per cent.; then, taking the silver, because during the construction the money paid me by the Government was silver, and when the liquidation took place the balance paid me was paper. Taking the silver, it was in proportion of 67½ to 32½ of paper. That will give $40,468.29 as the price paid to me per kilometer, gold. Farther on, I will show you—

Mr. STINE: Just testify now; don't make any speeches.

WITNESS (continuing): Very well; all right; I am trying to throw as much light on those things as can.

Mr. SCHRAMME: Q. In addition to the $40,468.29, you were paid for the rolling material in addition? (WITNESS:) Yes; I do not account for that; it was not to be compared with yours; you had very little in comparison with ours. Now, I come again to Mr. Cherry's statement. Mr. Cherry

stated the Colombian Construction and Improvement Company moved 206,250 cubic yards, while, according to Mr. Carter's estimate it is only 108,920—

Mr. STINE: You are not going to testify as to what Carter has testified to; testify as to your own knowledge.

The CHAIRMAN: You want to explain that discrepancy, do you, Mr. Cisneros?

The WITNESS: Yes; I have reviewed so much of these estimates that I thought I was entitled—

The CHAIRMAN: All right; go ahead.

(WITNESS continuing:) Mr. Cherry says that my work was done in 8 years, but I began at the end of September, (704) 1878, including the establishment of the works, the surveys, etc., and stopped work December, 1884, on account of the revolution; that is only six years and three months. My work, taking the roadbed which I delivered to the Governmet as 1½ kilometers, makes 28¾ kilometers, while the C. C. & I. Co. built 9.866 kilometers; that is only about one-third.

Mr. ROBERTSON: State how long it took them to do that? Q. It took them to do that, in matter of fact, six years. I say, as a matter of fact, because they kept the railroad all this time

Q. What you mean to testify is that they held the concession from 1890 until 1896? A. Yes; but the real time employed in the construction of the road was two years and ten months, I think; in that proportion in 6 years and 3 months they would have built only 21¾ kilometers.

Q. As against how much for you? A. As against 28¾ kilometers that I built.

Q. Now, state how long it would have taken the C. C. & I. Co. to build to Cali, if it had gone ahead at the rate at which it progressed in that 2 years and 10 months? A. If in 34 months they built 9.866, say, ten kilometers for the purpose of calculation, it would have taken forty years for them to get to Cali. Mr. Cherry stated that the Cauca Railway could be operated for 40%, but his own figures show the contrary. In these two years and ten month he agrees that the gross receipts have been $87,084.35. and in the time he stated the cost of repairs to be $56.500, operating expenses, $28,840, making a total of $85,340.

Q. Against what receipts? A. Against $87,084.35, the difference being only $1,744.

The CHAIRMAN: Q. Have you reduced that to percentages? A. It is practically nothing. The net receipts are (705) $1,744, and the expenses of operation and repairs are $85,340.

The CHAIRMAN: Q. Then the operation and mainte-

nance amount to about 96 or 97% of the gross receipts, taking both items? A. Yes. Mr. Cherry stated that a lineal foot of trestle cost him $7.23, and as we have allowed in our estimate $15.00 per lineal foot, we have on the 3,908 lineal feet of bridges allowed to the Cauca Company $16,-232.58, gold, in excess of Mr. Cherry's price. The same gentleman stated in his report that the cost of cross-ties was 28c., and as we have allowed 50c. on the 8,315 cross-ties estimated by us, there is a difference in favor of the Company of $3,587, gold; and the total of these two items is $19,819.58. In this report of Mr. Cherry he says: "I approximate or classify the expenditures of the Company, in gold, as follows, including work done at Buenaventura: Constructing 16 kilometers 691 meters, $204,850; repairs to old line, 34 months, $56,500; operating road since Jan. 1, 1891, $28,840; surveys to Cali, $25,200; erecting steel bridges, $27,500; construction beyond San Jose, $43,500; materials and supplies on hand, $45,000; total, $431,390.

Very well, now I take the following amounts overcharged in Mr. Cherry's report, and this difference is represented by the following items:

Difference between cost of K. 16.691 and

K. 9.866	$83,764 58
Repairs of old line	56,500
Operating of road	28,840
Difference on surveys	2,395
Difference on erecting bridges	5,425
Difference on the cost of work beyond San Jose.	28,171 99
Difference on material on hand	23,423
Total	$228,519 57

(706) which deduct from the $481,390 leaves a balance and a total cost of construction and equipment as per Mr. Cherry's report of $202,870.43.

Therefore, by the Government estimates the Cauca Company is allowed $31,038.71 more than what resulted from Mr. Cherry's report, in spite of his figures being $431,390 and those of the Government only $233,909.14. The reason for this difference is that in his account Mr. Cherry included as construction expenditures sums which are chargeable to repairs.

Q. That is all the cost of construction? A. Yes, all the cost of construction, as he says, while in our estimate the cost is $233,909.14.

The CHAIRMAN: There is a blank in Mr. Wilson's tes-

timony as to where he graduated; have you found that out yet, Mr. Stine?

Mr. STINE: Yes, it is the University of Missouri.

(WITNESS continuing:) Now, I have checked this with the Cauca Company accounts; from Mr. Barney's statement, the New York account is as folllows: Shall I read it all?

The CHAIRMAN: Yes.

(WITNESS continuing): This is Mr. Barney's statement: the New York account is as follows: *b-1*: bills drawn by Buenaventura office on New York office, $143,431.18—

Mr. STINE: Q. Will you not give the totals, Mr. Cisneros? A. Yes; I asked about that, and the Chairman said to—

Mr. ROBERTSON: Well, it is very short.

Mr. STINE: Well, you might put it right in; just give the totals now, and have it copied in the record.

(707) Mr. ROBERTSON: I think if he accompanies it, in the minutes, with an explanation as he goes along—

(Witness continuing:) b-2, deposit of $50,000, returned, $50,000; b-3, railroad materials, $32,471.25; b-4, sundries, supplies, $2,763.44; b-5, arms and explosives, $6,970.32; b-6, rolling stock, $17,980.14; b-7, bridges, $12,789.23; b-8, hospital and medical expenses, $464.82; b 9, provisions, $5,916.76; b-10, machinery, tools, engineer's supplies, not appertaining to the permanent way, $8,044.44; b 11, freight, insurance and consul fees, $15,727.69; b-12, commission, $4.52; b-13, salaries of employees of the railroad—their travelling expenses, $9,680.45; b-14, sundries, $2,315.17; total, $308,559.41. Very well, now from this we have to deduct the following items: In the first place the $143,431.19, and in the second place the $50,000 returned, because that is money which is going to be employed, and where is the work done with that? After that, we come to the materials; here is an item of $32,471.25, railroad materials; of that material, $14,829.38 has been employed on repairs and $2,856.55 are on hand; therefore, I deduct that, which amounts to $17,685.93, from the $32,471.25, railroad materials. Sundries, supplies, I have had no means of ascertaining exactly the division, and I have supposed that one-half went for construction; therefore, I will deduct $1,381 72. I have done the same with provisions, which amount to $5,916.76, and I have deducted $2,958.38. Freight, insurance, consul fees, and so forth; this I have deducted, one-half from, because the amount of material shipped by the Company for operation is more

or less equal to that shipped for construction; therefore, I have divided that by one-half, which is $7,863.84. Sundries, which amount to $2,315.17, I have deducted also one-half for construction and one-half for operation, say $1,157.58. Altogether makes the reductions $224,478.63; this I do not mean to take out of the Company, but I give credit to them for said amount on the account for operations, (708) leaving a balance of $84,080.78. Now, from the statement, taken by Mr. Barney of the Buenaventura accounts: Expenses, $5,304.04; timber, $13,420.98; pay-rolls, $187,239; construction, $31,880; fuel, $4,525.34; hospital and medical expenses, $2,635.98; labor procuring, $2,467.82; Captain Goddard, $1,402.90; vessel "Oriente," $542.05, making a total of $249,418.40. Of these, expenses are $5,304.04 and as there is no proper means of knowing what it is, I have deducted one-half, $2,652.02; on timber, I deducted $6,710.49, because said amount was used on operation during that period on repairs of bridges, and so forth. Pay-rolls for salaries and wages, $46,037.82; employed on operation and maintenance. From the construction account I have deducted ¼; my deduction is $7,970, because the account explains nothing, and many items in it seem to be for operation—so that is a guess, but I think it can be no less than said $7,970. Then I deduct ¾ from the fuel account, or $3,394.16, because most all of the fuel was used on operation and very little on construction. I deduct ½ of the medical expenses, which is $2,635.98; I have deducted $878.66. The deductions amount to $67,643.15, and as the amount of the account is $249,418.40, deducting from it $67,643.15, the balance is $181,775.25, and adding to that the balance of the New York account, $84,080.78, it appears that the amount expended was $265,856.03, but as in the same accounts it is stated that in Mr. Simmonds' hands were $60,000, Colombian currency, which at 100 per cent. equals $30,000, gold; deducting this amount, the balance is $235,856.03, while our estimates were $233,952.14, leaving a difference of $1,946.89.

Q. This is to when? A. This is to October, 1893, for construction.

The CHAIRMAN: Q. Who was Mr. Simmonds? A. A merchant of Cali.

(709) The CHAIRMAN: Q. I want to know whether he represented the Company, and whether the money which he held he held as agent of the Company? A. Well, from Mr. Cherry's report I assume that Mr. Simmonds was the agent of the Company in Cali. He says—I am going to look for what he mentions about that. Mr. Simmonds was

the agent of the Company at Cali. Now, I am going to speak about what you received. The Company has acknowledged that it received $166,132.61 from operation and guarantee here in New York, according to Mr. Barney's statement, and besides that, in cash there in Colombia, $200,000 from the Government. That makes a total of $366,132.61.

The CHAIRMAN: Colombian money?

WITNESS: Gold. Now, as we have ascertained, or we have stated--

Mr. STINE: Don't argue now.

(Witness continuing:) I want to make a deduction here; as we have ascertained, or stated, or what you like to say, the Company has built 9.866 kilometers. Dividing that amount by the number of kilometers built, after deducting from the amount the cost of rolling stock, it appears that the price per kilometer paid already by the Government to the Company is $34,923; then there is an item which I have not been able to establish, and which is against the Company, and it is the account of materials, tools, and so forth, that they have used from the storehouse left full by the Government to them, so, if we added that to this $366,000, we will find the price per kilometer very near $38,000.

The CHAIRMAN: That sustains your position.

The WITNESS: I do not know that I have anything else.

Mr. STINE: Do I understand that the Government owes us $37,000.

The WITNESS: No.

(710) The CHAIRMAN: Pehaps we had better hear from Mr. Ponce de Leon, so as not to keep him waiting.

Mr. ROBERTSON: Just one more question from Mr. Cisneros.

Q. Mr. Cisneros, how many concessions have you had from the Colombian Government for the building and operation of railroads? A. The first concession was the Antioqui; the second, the Cauca Railway; the third, the Jirardot Railway; the fourth, the la Dorada Railway, and I do not count the Barranquilla, because that was a purchase from the Government, so I make four, and then the one for the navigation of the Magadalena river—

Mr. STINE: That is not a railway.

Mr. ROBERTSON: Well, I will change my question to include railways or any other concessions.

Q. (Witness:) To open the navigation of the Magadalena river; that is the fifth.

Q. Do you know what the cost of getting a concession

from the Government is? A. Yes; or, at least, what it has cost me to do it.

Q. Assuming that a person or a Company sends a man from here to Colombia, paying all his expenses, what would it cost to obtain an option from the Government? A. I have a memorandum here—

Mr. STINE: Just give it to us in round figures—

(Witness continuing:) The trip will cost $158.00, gold: going there and in going and coming back, $316.00, gold; the expenses at Bogota, at a hotel, are about $150.00 per month, Colombian money; a good lawyer, $250.00 per month; unforeseen expenses, $250.00 per month; in all, $650.00 per month; assuming that the time necessary to (711) get the concession; in this case, for instance, I heard that Mr. Cherry spent nine months, I do not know whether it was that or not.

Mr. STINE: Mr. Schramme spent more than nine months.

(Witness continuing:) That at $650, or $230, gold, at 150 per cent. would be $2,340.

Mr. ROBERTSON: Q. On nine months' basis? A. Yes; that is without any salary for the gentleman; only the traveling expenses; that covers all the largest expenses; I never have spent so much as that.

Mr. STINE: Q. Suppose you were commissioned to go out and find a gold mine for a man, and you succeeded in locating one, and your expenses for finding that mine were $500, but it turned out to be a very valuable gold mine, would you consider that the cost of locating and finding the mine would bear any relation to the finding of the mine in case you wished to sell it? A. That question cannot be answered in the affirmative without an explanation; if I understand the question, it is this: suppose you engaged me as an engineer—

Mr. STINE: No; that is not it; if I sent—

Mr. ROBERTSON: This is the point—

(WITNESS:) But I am going to consider this, if you will allow me.

Mr. ROBERTSON: Q. You are on the wrong track; his question is simplicity itself; he says this: Suppose that I were to send you, supposing that you were not Cisneros, but a common prospector; suppose that I send you out to find a gold mine for me, and you go; now, suppose that you succeed in finding it and bringing it to me, and it is (712) an extremely valuable one, and suppose that the total expenses you had made in fulfilling that commission were $500.00; now should you consider that that $500.00 was a controlling factor in the value of that mine—in the

price that I should set upon this very valuable mine—in case I desire to sell it. He asks whether you should so consider it; for yes or no. A. It is because I do not understand the question probably; there are two ways to consider that; does he send me as an expert to locate the mine or does the Company who has control of the mine, which I have located pay me only $500.

Mr. ROBERTSON: Q. This is an illustration: Suppose I should make you a present of a diamond worth $200,000; supposing that you desired to sell that in the market, would the fact that you got the diamond for nothing have anything to do with the price that you would ask for it? A. Certainly not.

Mr STINE: Q. That is all.

Mr. ROBERTSON: Q Do you know whether the Cauca Company, or the Columbian Construction & Improvement Co. had to go down to Columbia to get a new concession for an absolutely new road from beginning to end, or whether they got a concession to carry on a road which had already been commenced? A. They got a concession on a railway already commenced, and everything established.

Q. This railway has been likened to a railway of great value—I should say the concession—do you consider that is a fair comparison; in other words, is the concession—was the concession at the time the Cauca Company obtained it a very valuable one? A. I do not consider it.

(713) Q. How valuable do you consider that it was? A. The value of a concession of that kind depends entirely on the conclusion of the railway, and the remuneration of the capital invested, and, as I said yesterday, Colombia is a new country, is very little known, and no capitalist will invest money in it. Before I had the concession, Smith and his friends were trying to raise in Europe the money for that railway, and they failed, in spite of a good guarantee of $6,000,000. In my concession, the Government was a partner to me, and supplied one-half of the money. My calculation was that, if I could not at once get the money from the public subscription, I could do it afterwards, when I would have expended the Colombian Government's money, the private money of my friends, and carried the railway to a point where it could be a good guarantee to acquire money from public subscription. I mean to say to act on the same principle as when I obtained money to extend "the Barranquilla railway," to build the pier, etc.

Mr. ROBERTSON: What I want to know more particularly is your opinion as to the value of the concession of the Cauca railway? A. Cash money?

Mr. ROBERTSON: Yes. A. Nothing; for shares, yes, for a party wanted to invest the money.

Q. In your opinion, had the concession, at the time of the forming of the convention under which we are now meeting, any value as a future enterprise, to go on and complete it up to Cali? A. Yes, in shares it might be, but they might find at the end that they had a railroad built and no traffic.

Q. Would it, in your opinion, be a profitable undertaking to build that road from Buenaventura to Cali, under the conditions existing at that time? A. If the traffic were (714) not increased, it would not be profitable—if it could be increased, which means to take into the country labor and capital, yes.

Q. I mean under the conditions which existed then? A. I think not.

Mr. ROBERTSON: That is all, Mr. Cisneros.

Mr. STINE: That is all.

The CHAIRMAN: The Commission is much obliged to Mr. Cisneroes for his interesting testimony.

PONCE DE LEON was then called as a witness for the Cauca Company, and the usual oath of affirmation was administered by the chairman.

EXAMINED BY MR. STINE.

Q. What is your full name? A. Nestor Ponce de Leon.

Q. And what is your age? A. 60.

Q. What is your occupation? A. Lawyer and notary public.

Q. And are you familiar with the Spanish language? A. Yes, that is my native language.

Q. Where were you born? A. In Havana.

Q. Are you familiar with the English language? A. Somewhat.

Q. Are you or are you not? A. I am somewhat. I cannot speak it good, but I can make myself understood.

Q. But you are familiar with its words, and its rules of construction? A. Yes.

Q. And have you had any experience translating from Spanish into English and English into Spanish? A. Yes.

Q. And you have translated contracts? A. Many of them.

Q In addition to translating, you have studied law, have you not? A. Yes.

(715) Q. Are you admitted to the bar in Havana? A. Yes; I was 11 years a lawyer in Havana.

Q. Are you admitted to the bar in New York State? A. Yes; I have been for 12 years in this State admitted.

Q. Have you ever translated any railroad contracts? A. Many of them.

Q. You are familiar with the terms which are used, as a rule, in railroad contracts? A. Yes.

Q. Now, Mr. Ponce, I show you a paper purporting to be a translation of what is known as the Convention of Jan. 4, 1897, between the Cauca Company and the Government of Colombia. Have you ever seen the original Spanish Convention of Jan. 4, 1897? A. Yes, I have.

Q. Have you read it through? A. Yes.

Q. Carefully? A. Yes, pretty carefully; many days ago, of course.

Q. Now, I show you another paper, known as the "Bases de Convenio." Have you ever seen this before? A. I have.

Q. And read it carefully? A. Yes.

Q. Now, Mr. Ponce, there has been some discussion before this Commission, extending over a good many hours, as to the meaning of certain words which are used in this Convention, and I think the first reference to them is in the 2nd article, which I will ask you to examine; please read it through, and then read the third article. You see there the words "*obras*" and "*trabajos*" used in conjunction with the verb "*costear?*"

Considerable discussion then ensued on account of an objection by Mr. Robertson to the question.

Q. Is the word "*costear*" used in connection with the words "*obras y trabajos*" in the second paragraph of the article? A. No; the verb "*costear*" is not there; I will say this: that a translation made in this way is not (716) the translation; it cannot be done in this way. It says here that the Government of Colombia must pay to the Company, as a just indemnity for the works (*obras*).

Mr. STINE: This is not an answer to my question.

Objection raised by Mr. Robertson, who said it was the third time that Mr. Stine had interrupted the witness in his translation, when he came to the word "works," which he had now used three times in English. The last time he said it was in answer to me, and just as he said "works" he was interrupted by my honorable friend.

Mr. STINE: That is not a fair statement.

Mr. ROBERTSON: Now, wait; I am addressing the Chair.

Mr. STINE: He did not use the word "works."

The WITNESS: I did; I repeat it, "works."

The CHAIRMAN: The Chair will rule that perhaps Mr. Robertson was a little zealous; the Chair understood that the witness was translating the two words "*obras*" and "*trabajos*"; that he said "works," and then he repeated the words in Spanish; there was no reason for interruption.

Mr. STINE: I object to all this interruption on the part of Mr. Robertson; am I, or am I not, to be allowed to examine the witness in an orderly manner.

Some discussion then ensued between Mr. Robertson and Mr. Stine, and the Chair ruled as follows: We must put an end to all personalities, and I call both parties to order, and proceed to business.

The CHAIRMAN: Now, Mr. Ponce, proceed.

The WITNESS: I do not know what you want me to say.

The CHAIRMAN: Please continue your translation, and answer if the verb "*costear*" is included in this translation.

(717) A. No, it is not. It says that the Government of Colombia will pay to the Company a just indemnity for the works and work which the Company have executed during the time in which the enterprise has been in its charge, and for the rolling stock, etc., etc., etc.

Mr. STINE: Q. Then the verd "*costear*" is not there? A. No.

Q. Please look at paragraph three and translate that? A. Article 3: The Government of Colombia and the Company acknowledge beforehand as a just and only indemnity a sum that may be equal to what the Company may show to have spent in the works and workings executed by the Company in the construction of the said railway, and the railway material, etc., introduced with destination of the same way.

Q. Then, Mr. Ponce, after having read this paragraph carefully, what, in your opinion, would be the English equivalent of the words "*obras y trabajos*?" A. Well, I will say works and workings every kind of work.

Q. Work and labor, would that be correct? A. Labor is "*trabajos*."

Q. Then work and labor would be a correct translation of these words; please state whether—

Objected to by Mr. Robertson as leading.

Q. Mr. Ponce, please state whether or not there is any evidence in this contract which would indicate that the

words "*obras y trabajos*" are limited to work done locally; that is to say, in Colombia? A. I do not see any.

Q. Is there any meaning which can be applied to those words, by the most violent imagination, which would limit their application to local work done? A. I do not consider it so.

Q. You think it is an absurd interpretation? A. It is a mistaken interpretation, not absurd.

(718) Q. Please state whether or not there is any meaning attached to the words "*obras y trabajos*" which makes them mean somethtng else in a railroad contract from which they would mean in any other contract? A. This morning I was sent for by Mr. Stine, or Mr. Schramme and I went and looked right away—

Mr. ROBERTSON: Please answer the question.

A. I am not myself an authority, and will answer it according to the dictionary; we do not call ourselves authorities; I am an expert, authorities we leave to the principal people in the country.

After discussion, the chair ruled that the previous question and answer be stricken out.

Mr. Robertson objected on the grounds that the witness had declared that he was not an authority, and continuing said: I want to know whether this Commission is to understand that whenever my friend gets an answer which proceeds so far as to become disagreeable to his side of the case, and very agreeable to our side of the case, if he is to be permitted to withdraw the question, and thus prevent the answer going on the record. Can testimony be taken from the record at the request of my friend? I have never heard of such a thing; I never heard of this being permitted in any Court.

Mr. STINE: May I be allowed to say a few words—

Mr. ROBERTSON: The chair had better rule on the question before further discussion.

Mr. Stine called attention to the difference between the words "authority" and "expert," and said he would change the word to "expert." It would be a violent assumption for any individual to consider himself an authority on such a subject; this is generally left to the learned persons of the land. The witness has said that he has selected an authority, and as an expert would testify to the meaning of the words

(719) The WITNESS: I do not consider myself an authority on any matter, but I consider myself an expert in many matters. It would be ridiculous for me to say that

I am an authority in the matter of words; all I can do is to quote the opinion of the dictionaries.

The CHAIRMAN: In view of the fact that all this is matter of record, and the Commission will have the benefit of this discussion, the Chair rules that the question has been withdrawn, and that all that follows has been stricken from the record as not responsive to the question, as the answer had not proceeded far enough to be an answer to the question.

Exception to the ruling taken on the part of the Government.

Mr. STINE: Q. Mr. Ponce, in examining the contents of documents, have you frequently come across the words "*obras*" and "*trabajos*" used singly and together? A. Yes, singly and together.

Q. Have you ever had occasion to look up the meaning of these words, as shown in Spanish-English dictionaries? A. I have.

Q. When did you last do so? A. About an hour ago.

Q. Did you make any notes? A. I did.

Q. Please refresh your memory, and state what you ascertained. A. I will say that the word "*obras*" is used a good deal more generically than the word "*trabajos*." The word "*obras*" is a word which we find particularly in the French language. It means everything done, either morally, mentally or physically or materially. I consulted the dictionaries, and I took this note from the dictionary of the Academy of Spain: "'*obras*,' what is done or produced by an agent; any production of intelligence, science or arts; work or time required for the execution of a thing." I find in Fernandez Cuesta: "Anything created (720) or produced by some power or agent; scientific or literary work of any kind." In the Sociedad Literaria, and in the dictionary of Ochoa, both very important dictionaries, I find: "Anything made or created or produced by a power or agent, whatsoever it may be; literary or scientific work; any moral action produced by will; the amount of work employed in making anything; the amount of time in making, constructing, building or forming anything; work; the operation of making, constructing, forming, organizing, etc.; disjointing or disarranging anything;" these are expressions concerniug the word "*obras*."

The CHAIRMAN: Q. Let me ask, Mr. Ponce—when you use the word "*obra*" in the singular, is there any difference than when used in the plural, as "*las obras*?"

Has it any other meaning? A. The same, only more general.

Mr. STINE: Q. Have you also seen the word "*trabajos*," and looked it up? A. The "Academy" says: "Exercise or occupation in a work or profession; every work done; any writing about any matter or faculty." Fernandez Cuesta says: "labor or work in making anything;" then it says just about the same as the Academy: "every work done, whatever its nature may be." The "Sociedad de Literatos" and Ochoa say "the act or effect of working, exercising or occupation in any work; any writing; any work in manufacturing; any products coming from the mind of man, either mentally or intellectually." These are the meanings of the word "*trabajos.*" There are other meanings, but they are not to the point.

Mr STINE: Q. Does it say there physically or mentally? A. Mentally or intellectually.

Q. Now, Mr. Ponce, from these definitions would you make any distinction as to the general use of these (721) two words, as to whether one is used, generally speaking, in reference to material facts, and the other in reference to mental facts; what distinction would you make? A. I believe the word "*obras*" refers to anything intellectually or mentally, and "*trabajos*" to the material part, and I will also add that both words are used in Spanish in the same way. We use the word, for instance, as "*los trabajos de Cervantes*"—the works of Cervantes. We would say mental work, "*trabajo mental;*" we would not say "*obra mental.*"

Q. Are they convertible terms? A. Not exactly.

Q. But when used together, what do they express? A. Used together they express everything; they give more force, one to the other.

Q. Do they usually mean, as used in this contract, both physical or concrete work as well as the mental work? A. Yes, they do.

Q. Now, Mr. Ponce, testimony has been offered here going to show that these two words, as used in this contract, refer, "*obras*" to the work done on the earth and below the earth, or around the earth, and "*trabajos*" to the superstructure.

Mr. ROBERTSON: I object on the ground that there is no testimony of that kind in the case; the testimony is just the opposite, and, if my friend wishes to quote, he must quote correctly.

Mr. STINE: I will reverse the terms; it has been testified that the word "*obras*" refers to the superstructure,

and the word "*trabajos*" to labor and excavations and embankments, as used in this contract, and that the use of these words is limited to this meaning; is that so.

A. No, sir; it is a capricious definition.

Q. Is there any authority for differentiating between the meaning of these two words—that is, to make one apply to earthwork and the other to superstructure? A. I do not know that there is; no.

Q. Do you believe that there is any authority for that (722) definition? A. No—it would not be logical.

Q. Why not? A. I have seen in many estimates, and in different accounts, "*obra de exploracion*," "*obras de excavacion*," "*obras de movimiento de tierras*," and many things of this kind used in the same sense as the word "*trabajos*."

Q. Have you ever seen in these accounts, or estimates, or any other estimates of large works, railroad or bridge building, or any other account, in which they were applied to administration or general expenses? A. I think so; yes, I have.

Q. In reference to railroads? A. Yes.

Q. Having examined the contract, it is, in your opinion, or is it not, the intention as expressed by that contract that all the general expenses and administration shall be paid as an indemnity to the Cauca Company? A. Yes, that is my opinion.

Q. Do you think that it is expressed there clearly? A. Most positively, and I not only think that, having read that paper, but also because I have read the first paper—the Basis of the Convention.

Q. Why do you say that? A. Because one is confirmed by the other. The first was the Basis to make that agreement, and in that first one it was clearly expressed, in my opinion.

Q. Do you consider that the object and intention of the Convention was to reimburse the Cauca Company for all legitimate expenses which it had incurred? A. That is my opinion, based on the Convention.

Q. Mr. Ponce, you have read the Basis of the Convention as well as the Convention. In your opinion, are the provisions of these two papers mandatory, in that they compel this Commission to examine the road on the spot at Buenaventura—namely, on the track, wherever it may be?

Mr. ROBERTSON: I object to the question, because the Basis is not a part of the final agreement.

Mr. STINE: The Basis was admitted under a previous (723) objection on the part of the Government.

Objection overruled.

A. I do not find it mandatory in the Basis of the Convention. It says: "Shall inspect on the line—on the spot—the work of the railroad, and to make confrontations and verifications that should be necessary." Suppose that no confrontations should be necessary to be made, it would be useless to make the inspection.

Q. The clause which refers to that in the Convention, is it or is it not mandatory? A. Well, I find the meaning as in the other one.

Mr. ROBERTSON: Q. Please state whether that is a true translation? A. I find that it is mandatory, but at the same time I find that it is for a certain purpose. If such purpose is not required, it would not be necessary.

Mr. ROBERTSON: Q. But is mandatory as well as in the agreement; has it the same meaning in each of the two papers? A. Not exactly; in one it says, in case of necessity, and in the other it says, for a certain purpose; therefore, if that purpose is not required, it is not mandatory. If I send a man down to the sea to look for a ship, and in coming down to the shore he knows that the ship is not there, it is not mandatory for him to look for it.

Mr. STINE: Q. What is your explanation, an illustration about the sinking of a ship? A. I said, suppose I am sent by any commission to look for a ship in the bay, and I find when I get down to the coast that the ship has sunk—my order certainly was mandatory, but as there is no ship for me to look for, I cannot consider it mandatory.

(724) Mr. STINE: Q. Consequently, if there is no purpose it is not mandatory? A. Quite so.

Q. Now, looking at these two clauses, as a Spanish lawyer, and reading the Convention of January 4, 1897, in the light of the Basis of the Convention, which is referred to in the Convention itself, is it your opinion that if the Commission does not deem it necessary to examine the physical condition of the road as it is to-day, they must proceed to examine the same? A. That is a question on which I would not dare to give an opinion, because I am not a lawyer in Colombia. I do not know exactly the details of how the Convention was made. I do not know, for instance, if the Government of Colombia—of course, I do not mean to give any offense to any representative of the Government—but I do not know if the Government of Colombia may not, on drawing up this Convention, may have had in view the intention to avoid payment by making loss of time, and I will not give an opinion outside of my province.

Mr. STINE: You mean you could not give an opinion on the subject.

A. As I have said, the Government appears to be actuated by greatest good intention, and I believe it is, too, but at the same time I would not dare to say if the Government would not embrace this opportunity of any article not being followed exactly to the letter, and the Government might say—you have not acted according to what we agreed; therefore, let us make a new Convention. Therefore, I will not give an opinion on the matter, as my opinion has no basis.

Mr. ROBERTSON: Q. Why have you made this last explanation, Mr. Ponce? A. Because I have been asked if I could give an opinion in the matter.

(725) Mr. ROBERTSON: Q. Did you make this explanation because you saw something in the convention which might, in your opinion, justify the Government in raising that point? A. No, sir; I saw nothing, but that point might be raised.

Q. Even if you did not see it? A. Yes.

Q. Now, you speak of the language of the 5th paragraph being mandatory, and you say if you were directed to go and look for a ship, and in reaching the shore you found that there was no ship to look for, you would not be compelled to go ahead, as there was no ship? A. To be sure not.

Q. Now, suppose you were a member of a Commission and were directed to go to South America and inspect a railway, which the Government said was there, would you stop on the shore of New York harbor, and not go and see if the railway was there in the other country? A. I would go directly there.

Q. And if you found the railway there, you would inspect it? A. To be sure.

Q. Do you mean to say that if this Commission finds out by some process that there is no railroad to inspect in South America, that, in your opinion, the Commission would take the same position with reference to the trip to the railroad as you would take with respect to the trip to the sunken ship? A. I do, if there is absolute proof that there is no such railway.

Q. But if they were satisfied that the railway was there for inspection, you would expect them to go and inspect it? A. Provided there was no question as to the existence of the said railroad.

Q. Suppose the Government said that part of their case was the inspection of the road, then the Commission should make the examination, provided the road was there? A. Quite so; yes, sir.

(726) Q. Now, I wish, Mr. Ponce, that you would refer to

the second article of the Convention; do you find therein these words: "and within fifteen days next following the day upon which this agreement shall be arrived at shall deliver to the Government of Colombia the Cauca railroad with all its plant, rolling stock and every work of any kind; also buildings, tools and all kinds of appurtenances, etc." Do you find the Spanish equivalent for these? A. I find the word "*obras*" translated as work of every kind done. I see—

Q. What word do you find as the Spanish equivalent for the English word "work" in that connection? A. "*Obras.*"

Q. Is that used in the singular or plural sense? A. Plural.

Q. You find the words "plant" and "rolling stock" also in the same connection, do you not? A. Yes.

Q. You find the words "buildings, tools and utensils of all kinds?" A. Yes; I find in this connection in the article the following nouns: fixed plant, rolling stock on hand, works, buildings, tools, utensils of all kinds.

Q. Now, will you pick out from those nouns the particular nouns which stand for "completed roadway" as distinct from plant, rolling stock, tools, utensils, etc.? A. If I am not mistaken, the "material *fijo*," of the railroad means the roadway, or roadbed, with track and all.

Q. What part of the road is represented by the word "works"? A. Everything.

Q. That means the whole road? A. Yes

Q. All the completed structure? A. Yes.

Q. So that the word "works" in that connection, relating, as it does, to the railway work, would mean practically everything embraced in the road as distinct from the tools and utensils and rolling stock and movables connected with it. Is it not broad enough to include that? A. The (727) word is broad enough to include everything.

Q. You say it includes the whole completed road? A. Yes.

Q. Do you, on reading the second article of the Convention, find that it refers to the Cauca Railroad Company, and also to the fixed plant of the railroad, also to the rolling stock of the railroad, also to the completed works, also to the completed road, also to the tools and utensils of all kinds appertaining to the road; do you find that it refers to these things? A. I find that it does, and also it refers to etc., etc., which, of course, I do not know what they are.

Q. Do you find those words which I mentioned in my last question? A. To be sure I find them.

Q. Do you find the word "etc." repeated? A. Yes.

Q. And you say you do not know what that means? A. I suppose—

Mr. ROBERTSON: No suppositions, please. A. Well, I do not know, to be sure.

Q. In the 2nd article do you find anything referred to except the Cauca Railroad Company, its fixed plant, rolling stock, buildings, tools, utensils, etc., etc.? A. Yes; I find "works" and "accessories."

Q. What word is used to indicate "accessories?" A. *Anexidades*.

Q. Now, in addition to the accessories, do you find anything further? A. Yes, I find two, "etc., etc."

Q. Yes, but please answer my question. A. I do not understand your question.

Q. Do you find in article second any reference to anything except the Cauca Railway, its fixed plant, its rolling stock, its works, its buildings, its tools, and its utensils of all kinds, its accessories, etc., etc.? A. Yes, I find before that the renouncement of the Company's privilege and other things.

Q. Do you find anything besides these articles which I have mentioned to be turned over to the Government? (728) A. I don't understand; please let me know what lines you are referring to.

Q. I understand the article refers to something physical to be turned over to the Government. Kindly enumerate in Article second the physical things in that article to be turned over by the Cauca Company to the Government. A. The Cauca Railroad, with all its fixtures, rolling materials, existing works, buildings, tools, and utensils of every kind, accessories, etc., etc.

Q. Are those all the material things that are to be turned over to the Government so far as you can gather from that article? A. I do not see anything more.

Q. Now, do you find anything in that article in relation to what the Government is to pay, if anything, for those things to be turned over to it? A. Yes; I find that the Government will pay the Company a just indemnity for works and labors that the Company may have expended during the time, etc.

Q. You say for the work and labor? A. Yes.

Q. Do you find the word "*ejecutado*" following shortly after the words "*obras y trabajos?*" Is that in Spanish an adjective? A. No, sir; it is a participle present. It would have be "*ejecutar*" (done.)

Q. Is it not a fact that the participle, as used here, is also in the form of an adjective used to qualify or describe?

A. No, it is a participle; you mean that all participles can be used as adjectives in Spanish?

Q. Is it not a fact that the participle is also used as an adjective in Spanish? A. Yes.

Q. Why cannot it be so used here? A. Because it has before it the verb "*haya*," and it forms a tense of the verb "*haya*;" it is the subjunctive tense.

Q. Take the two words: "*haya ejecutado*:" do they not designate the state of completion of the "*obras y*
(729) *trabajos?*" A. Not at all; it does not mean completion in this case.

Q. What does it mean? A. It means done.

Q. Does not done mean completed, or finished? A. No, sir.

Q. When a thing is finished, is it not done? A. In certain cases; not always; the words "*hayo ejecutado*," in Spanish, mean "may have done;" they may be completed or not completed.

Q. You mean, then, this; that the word "*haya*," the words "*obras y trabajos*" are qualified, but that it does not necessarily follow that the "*obras y trabajos*" are completed works? A. Exactly.

Q. But they may exist in some condition of completion or part completion? A. I suppose so.

Q. Now, do you understand it that these works and materials are to be paid for, as provided in the third article, whether completely finished, or partly finished? A. I do, provided that the word works is understood as I understand it.

Q. And you suppose that there is nothing to be paid for that is not mentioned in the agreement? A. I do suppose that.

Q. I want a direct answer.

The chair ruled the witness could answer the question.

By Mr. ROBERTSON: Q. If you cannot give me a direct answer, I will withdraw the question, now, as a lawyer, do you mean to say that there is anything to be paid for except as is provided for by this Convention; yes or no; if you cannot answer it yes or no, do not answer it all. A. I will not answer the question.

Q. Do you, as a lawyer, mean to say that the Government is to pay for anything that is not mentioned in this convention; yes or no, or not at all? A. I will not answer.

Q. How long have you practiced law in Havana, and
(730) in the United States? A. Eleven years in Havana and 12 years in New York.

Q. Now, kindly turn to article three. Do you find in the original Convention words equivalent to the following: Article 3—The Government of Colombia and the Company accept in advance, as a just and only indemnity a sum which shall be equivalent to what the Company shall prove to have expended on every kind of work done by it in the construction of the said railway, and for the rolling stock, tools, etc., etc., imported for use on such railway? A. Yes, I do.

Q. Do you find anything else there? A. No, sir; I find a full stop—that is all.

Q. What word or words are used in Spanish as an equivalent, in that article, for "expended on every kind of work done by it in the construction of the said railway?" A. "*Que la compania compruebe haber costeado en los trabajos y obras ejecutados por ella en la construccion de la expresada via ferrea.*"

Q. Now, what do the words "*obras y trabajos*" stand for? A. I gave my interpretation of the words "*obras y trabajos*" everything done by the Company.

Q. Are these words, "*obras y trabajos*," as used in that article, qualified or referred to by the Spanish equivalent of the English words: "done by it in the construction of the said railway?" A. Yes, sir.

Q. What is the effect of that qualification as you understand the Spanish language? A. That anything which is not in relation, directly or indirectly, with the railway is not to be paid for by the Government.

Q. Well, do you not find a Spanish equivalent of the English word "construction" there? A. Yes.

Q. How does the Spanish equivalent for the English word "construction" qualify the Spanish words "*obras y trabajos*?" Does it not indicate that the "*obras y tra-*
(731) *bajos*" must have relation to the work that is constructed? A. I cannot answer the question.

Q. Now, in what connection, according to the phrase of article three, is the construction referred to therein? A. It means simply to carry on as an enterprise.

Q. What word is used for construction? A. *Construccion.*

And the meaning of it is what? A. The *construccion* means making and building a railroad.

Q. Is that what you mean by enterprise? A. The carrying on of it to the end; that is the meaning of it.

Q. You can not find any word that indicates "enterprise" there? A. Now, you cannot make me say what I do not want to say. You are wasting your time if you are trying to do that.

Mr. ROBERTSON: What is the Spanish word that stands for the English word "enterprise" or "undertaking"? A. *Empresa*. I do not see it here.

Q. That is the word in Spanish which you would employ if you were going to speak of the construction of a railroad as distinct from the carrying on of the general enterprise? A. I do not understand your question. Kindly explain it better.

Q. If you desire to say in Spanish what I now say in English; that is to say: "I am to pay for the work done by it in the construction of the railway as distinct from the expenses included in the operation of the railway," what would you say in Spanish as an equivalent for the English word "construction?" A. I will not answer that; I do not understand.

The CHAIRMAN: The gist of the question is to get at the Spanish word for "construction." I think the question is perfectly intelligible, but the chair will propound the question.

(732) Mr. ROBERTSON: The Commission will understand from the foregoing just what Mr. Ponce's qualifications are as an expert translator from Spanish into English and from English into Spanish.

The CHAIRMAN: Q. If you will kindly give to the Commission your interpretation of the Spanish equivalent of the word "construction" as used Article 3? A. *Construccion*. If you ask me simple to translate the word "construction" I will say "*construccion*," but I will not answer in the form given by Mr. Robertson.

Mr. ROBERTSON: Q. Is not that the word which you find used in the 3rd article of the Convention, which is here translated as "construction"? A. Yes.

Q. Do you find anything else referred to in the 3rd article as "to be constructed" except the railroad? A. I do not find any; no.

Q. Now, if you were going to say in Spanish, "I am to pay the cost of operating the railroad," how would you express that. A. *Explotar un ferro-carril, manejar un ferro-carril, la misma expresion vale.* (Secretary's note: The expressions are equivalent.)

Q. Have you now given all the forms of expression which occur to you as being equivalent to the phrase, "I have to pay the cost of operation?" A. I have told nothing about the phrase; I only told about the word "operate."

Q. How would you say in Spanish? "I am to pay the cost of operation." A. *Yo pagare los gastos de explotacion o yo costeare los gastos de explotacion.* You can use many words.

Q. Have you now used the general or proper words in Spanish. A. Yes.

(733) Q. If you wished to say in Spanish, "I have to pay the cost of construction," how would you say that? A. *Yo pagare los gastos de construccion.*

Q. So that, if you desire to say, "I have to pay the cost of the operation, or the cost of running the railroad," you would use a different form of expression from that which you would use if you desired to say only that you were to pay the cost of construction, would you not? A. Yes.

It being 2 P. M., the Commission adjourned until 11:15 A. M. on Monday, the 23d inst.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Twenty-fourth Session.

(734) Held at 30 Broad street, New York City, on Monday, the 23rd August, 1897, at 11:15 A. M.

Mr. A. G. Menocal called and sworn on behalf of the Government—Cross examination taken up by the Company—Mr. E. R. Olcott called and sworn on behalf of the Government—Cross examination of Mr. Olcott by the Company.

Present: Commissioners, Attorneys and Counsel as before.

The Chairman called the meeting to order at 11:25 A. M. In the absence of Mr. Ponce de Leon, the attorneys agreed to proceed with the examination of Mr. Menocal, a witness called on behalf of the Government.

Mr. A. G. MENOCAL was then called, and the usual oath was administered by the Chairman.

EXAMINATION TAKEN UP BY MR. ROBERTSON.

Q. Mr. Menocal, will you be kind enoug to give your full name? A. Aniceto G. Menocal.

Q. Your age? A. 60 years.

Q. Your profession? A. Civil Engineer of the U. S. Navy.

Q. Place of residence? A. Brooklyn Navy Yard.

Q. Will you kindly state how long you have been active civil engineer? A. Since 1862.

Q. Have you followed your profession continuously since then? A. Constantly; I have.

Q. Will you kindly state in what different countries you have practiced your profession? A. Since I graduated (735) in 1862 I was engaged as principal assistant engineer on the construction of the New Havana Water Works; I remained there until the latter part of 1869, in connection with the construction of those works, and then came to New York City. I was engaged in the Department of Public Works from the early part of 1870 to March, 1872, and I resigned my position to take up the command for the Government as Chief Engineer of the Nicaragua Canal Surveying party and sent out by the Government. I occupied this position until July, 1875, having in the meantime spent most of my time surveying the Nicaragua Canal and completing the plans and estimates for the construction of the canal. In 1875 I was commissioned an officer of the Government with the title of Chief Engineer in the United States Navy, which is the position I still hold with the rank of commander. In 1875 I was detailed by the Government as Chief Engineer of the expedition sent out to Panama to ascertain the practicability of the construction of the canal from the Atlantic to the Pacific across the Isthmus. I was ordered as Engineer of the Navy to Washington and Consulting Engineer of the Bureau in the Navy Department. I held this position until 1888. In the meantime I made four different trips to Nicaragua for the purpose of expanding and completing the surveys that had been previously made for the construction of the canal. In 1879 or 1880 I obtained from the Government of Nicaragua a concession for building the canal across that country. In 1887 I obtained a similar concession from the same Government, the first one having expired by limitation. In 1888 I also obtained a similar concession from the Government of Costa Rica; also for the construction of the canal through any part of their territory. In 1889 I obtained leave of absence from the Government to take the position as Chief Engineer of the Nicaraugua Canal Company, a position which I held for four years during the final location and execution of considerable work in Nicaragua by the Company for the construction of the canal. The works were suspended in (736) 1893, and then I resumed my duties in the Navy Department. Since then I have been principal civil engi-

neer in charge of the engineering for a half at the Norfolk Navy Yard and for the last two years Chief of the Brooklyn Yard.

Q. Of what country are you a native, Mr. Menocal? A. Cuba.

Q. So that Spanish is your native language? A. Yes.

Q. Have you had any experience in a professional way with the construction of railways? A. I have.

Q. Please state that experience to the Commission? A. I have constructed in connection with the Nicaragua Canal works about 12 miles of railway in Central America and though my duties in the Navy Department do not involve any railway construction, during all my professional career I have had more or less to do with that line of construction and especially so in Nicaragua when the Government was building the railroad there at the time I was in the country making the surveys for the Canal.

Q. What language is spoken in Nicaragua? A. Spanish.

Q. I now hand you the original Convention between the Government of Colombia and the Cauca Company, dated January fourth, 1897, which provides for the Arbitration in which we are now sitting. Will you kindly look at the second article of that Convention and give the Commission the benefit of your translation of it from Spanish into English? A. "The Company renounces in the absolute the privilege referred to in Article first of the Contract approved by Law 16 of 1890 and will deliver to the Government of Colombia within 15 days after this Convention may be ratified the railroad of the Cauca with all its material, fixed and rolling, existing, its *obras*, works buildings, tools, utensils and every kind of other accessories, and so forth;" is that sufficient?

Q. Just a little farther where it says, "In consideration whereof." A. "In consideration whereof the Gov-
(737) ernment of Colombia will pay to the Company a just indemnification for all the works which the Company may have executed during the time the enterprise has been in its charge and also the rolling stock and other materials which may have been introduced for the railroad and which are to-day in existence."

Q. Now, Mr. Menocal, I find in this second article the word "*obras*;" will you kindly state to the Commission what that Spanish word stands for in English when translated? A. "*Obras*" stands for works—completed works; works that have taken a tangible shape.

Q. That is the physical works? A. Physical works

that have been executed; for example, bridges, embankments, are works.

Q. As used in the connection in which you find it, has it reference to intellectual work or something of a tangible or concrete nature? A. It is something tangible or concrete.

Q. Now, later on I find in the same article the words "*por las obras y trabajos*," will you kindly state what the words "*obras y trabajos*" stand for as translated in the English as you find them in this connection? A. *Trabajos* is the physical effort applied to the construction of a work; *obras* is the result of the application of that work, of the *trabajos*. If you will permit me, I will illustrate my meaning.

Q. That is just what we want. A. For example, the survey of a railroad is a *trabajo*, excavating is a *trabajo*, transportation of excavations of material are *trabajos*, the excavation when completed is an *obra*, the embankment resulting from the handling of the material excavated is an *obra*. The building of the foundations, the excavations for the foundations, the building of the piers or viaducts of a building or bridge are all *trabajos*, the bridge and the building when completed is an *obra*.

Q. Now, as you find the words *trabajos* and *obras* in this article, do they then refer to the works of a concrete nature which are produced by the labors of laborers engaged in the creation of the work? A. That is an *obra*. (738) The *trabajos* is the work which is applied to the creation of the *obra*.

Q. So that in paying for completed *obras* and the *trabajos* connected with it you would pay for the physical structure or building in its completed state and for the labor employed in its completion? A. The labor and the material contained in the structure.

Q. Now, will you look immediately after the words *obras* and *trabajos* in the 2nd article and state what the words "*haya ejecutado*" mean. Do you find the Spanish words which are the equivalent of the English words, "which the Company has completed during the time which the Company has had the works in charge"? A. I understand your question. You want to understand what the meaning of the words "*haya ejecutado*" is.

Q. Yes, but follow the meaning out to include what follows. A. Kindly repeat the question.

Q. Question repeated. A *Haya ejecutado* means have been executed.

Q. After, do you not see a certain time mentioned? A. Yes; during the time the railroad has been under con-

struction by the Company or in the charge of the Company.

Q. Do you find the words *obras* and *trabajos*, as used here, refer to anything not of a concrete or physical nature, except labor necessary to construct the works? A. Except such technical and administrative expenses as are always involved in the construction of a work, such as the engineer's estimates, etc.

Q. Are these administrative expenses the expenses which are necessary for the execution of the work on the ground? A. Certainly, the execution of the work itself.

Q. And that includes engineers? A. Engineers and book-keeper and manager and such necessary staff as is necessary for constructing a work of this kind on the (739) ground. These expenses are always contained in an engineer's estimate of the work.

Q. Now, kindly look at the third article, and, as that is very short, please translate it into English. A. "The Government and the Company recognize beforehand as a just and only indemnity a sum equivalent to what the Company may prove to have expended in the works executed by it in the construction of the said railroad and in the materials, rolling stock, tools, and so forth, introduced for the railroad."

Q. Now, what relation do the word "works," as you have translated it here, and the word "constructed," as you have also translated it here, bear one to the other? A. Well, the works rather comprise both *trabajos* and *obras;* works executed are *obras*, works that have been only partially executed and are the effort towards the execution of an *obra*, that is a *trabajo*. There may be a part of the road in which a bridge may be finished and others on which there is not; if the bridge is only partially finished it is *trabajo*, if it is completed it is an *obra*. For translating the term *obras* and *trabajos* I would use the term works. I do not know of any other. That is the way I have expressed myself in all my negotiations when the phrase has occurred in Spanish countries.

Q. Now, must the *obras* and *trabajos*, which have been referred to in this article, which have been executed, be such as have been executed in the construction of the road? A. That is what it refers to; this contract refers to nothing else.

Q. Nothing else? A. Nothing else.

Q. And the *trabajos* would include engineering work on the ground and the local administration necessary to carry the work forward? A. Yes, that is always estimated for by the engineer as part of the cost of the *trabajos*.

Q. Would that include a timekeeper? A. Timekeeper, manager, clerks, and so forth.

(740) Q. In other words, would it include broadly the local force to execute the work? A. Yes, that is it.

Q. Now, suppose for instance that a corporation, existing under a very broad charter, which would allow it to operate in real estate and investmentt and improvements, and engage in practically almost any legal business, and suppose further that such a Company had in hand the construction of such a road as the Cauca road. Now, do you find in this Convention, so far as you have gone into it this morning, any provision that would warrant the reimbursement of the Company's general expenses, such as its office in New York, salaries of its officers engaged on its general business, as a part of the proper cost of the construction of the road on the ground? A. Not in this, as far as I have read.

Q. Now, kindly refer to the fifth article of the Convention, and in the 4th, 5th line, you will find the words *obras* and *trabajos*; please state whether the words have the same meaning (that is, whether they indicate concrete articles or substances or work necessary to conclude those concrete entities), that you have given to the words in the connection in which they have been used in the former part of the Convention? A. Exactly the same.

Q. Now kindly read that 5th article through and state whether or not you find any provision which directs that this Commission now sitting shall visit the Cauca railroad and examine the works on the spot? A. I do see such a provision in the article.

Q. And does that provision leave it to the Commission's mere discretion or does it direct that the Commission shall inspect the works on the ground? A. I take it to be mandatory.

Q. I had neglected Mr. Menocal, to ask you what Institute you graduated from? A. From the Troy Polytechnic.

Thank you, that is all.

CROSS-EXAMINATION TAKEN UP BY MR. STINE FOR THE

(741) CAUCA CO. (12:05 p. m.):

Q. Mr. Menocal, will you be kind enough to look at this paper and see if it is correct translation, or rather copy of a letter sent by you to Professor Haupt? A. It is.

Q. Let me call your attention to this phrase, or rather this clause: "If the Company is to be reimbursed its actual expenses incurred in the "*trabajos*" and "*obras*" of

the road, the sum so paid shall include the cost of all labor and material employed in the works, together with the cost of administration, such as official salaries, clerk hire, engineers and other employees necessary and actually applied to the construction of the railroad." There is no statement there, is there, that it is to be applied locally? A. Well, that is what I meant there.

Q. Well, now, suppose that you dispossess your mind for one moment, if that is possible, of the notion of your being an engineer, and take the contract from the Convention as it is now submitted to you; and consider the meaning which is generally applied to these words, either in the Spanish or the English; for example, if I say to you in English, such and such a person shall be reimbursed for whatever work he had done on a building or a bridge. Now, not looking at it from the point of view of an engineer, but from the point of view of a man wanting to understand what is included, would you take that to include all legitimate expenses applied in the construction? A. As applied to the work itself, yes. So far as is necessary for the execution of the work.

Q. Now, is not an architect's expenses in the construction of a house necessary as part of the work? A. Certainly; so is the expense of an engineer.

Q. Now, suppose it is necessary to have a man to buy rails, is not the man necessary to buy the rails a necessary part in the construction of the road? A. This is generally done.

Q. Please answer my question.

(742) (Question repeated.)

A. Well, he is.

Q. Now, is the man who directs him where to buy the rails the cheapest to be included? A. The manager is a proper charge on the road. I said so in my testimony.

Q. You limited that to the manager on the spot? A. I mean manager generally.

Q. Now, is it not a fact that the mental work done in the construction of a railroad, whether manager or purchasing agent, is just an essential a part of the force of that road as that done by the laboring men? A. The work of the manager is.

Q. And also every person whose work is necessary to bring about the result? A. You have to qualify that; the word "necessary" may be different in your opinion and mine; there may be a difference of opinion on that point.

Q. I acknowledge that. Take the cost of the purchasing agent; supposing you are building a railroad where

there is no means of getting the material, and it is necessary to have a man in some other country to obtain the material, and it consequently becomes necessary to have some one to buy it, is not that work just as important to the construction of the road as the work of any person directly working on that road? A. The manager, yes.

Q. I did not ask that. I say purchasing agent. A. If it is necessary for the purchase of the rails, yes.

Q. Now, suppose that this railway had been built, instead of in Cauca, in the United States, where every part which was required, and also the manager, etc., could be obtained—in the same way, engineers, bridge men, clerks, etc.—in making up your estimate of what the cost in the United States would be, you would consider that the persons in the office of the Company, the clerks who kept the books, etc., etc., would be an essential part of what you have to pay in order to build the road? A. Certainly; there is always a clerical force, which is part of the administrative work.

(743) Q. Now, suppose you were to build a railroad in a country where these materials could not be obtained, and where this clerical force could not be readily secured, and you had to divide your office, would there be any difference in principle in the interpretation of the words "*obras y trabajos?*" A. There would be; the engineers always, in estimating for works in these countries, allow a larger percentage.

Q. That is not my question.

(Question repeated.)

A. To some extent, yes; I could not answer the question; it depends on where the road is situated, what are the difficulties in getting clerks in that country; for example, the conditions are completely different between Nicaragua and Colombia.

Q. That we acknowledge. A. It depends upon what help may be obtained in the country.

Q. Assuming that no improper number of clerks were employed, and that the utmost was done to secure these clerks in a business-like way; assuming that the Cauca Company had done its utmost to secure the best clerks, would there be any difference in the principle of this? A. I don't know what you mean. I would say that the expenses there would be somewhat different.

Q. I put the cost of a road being constructed in this country, and I asked you whether in your cost of administration you would consider part of the "*obras y trabajos*" administration expenses, if the road was built in this coun-

try and you answered in the affirmative. A. Yes, if necessary for the construction of the road. I referred to such officers as are necessary to the management of that work.

The CHAIRMAN: Q. Suppose we include legal expenses also as legitimate expenses? A. I do not consider them so.

Mr. STINE: Q. You do not think the expenses of incorporating the company as part of the legitimate expendi-
(744) tures? A. Not at all.

Q. What do you mean by the last clause of your letter; was there anything in that contract as you read it which referred to the fact whether or not the Company was to be reimbursed for its expenses? A. That part of the letter is very plain. I meant the engineers required and the clerks necessary in that country for carrying on the work, keeping the pay-rolls, etc. The extent of these depends upon the management.

Q. Now, how do you tell that legal expenses should not be included? Suppose the work done were for the building of a house, and the architect wished te know if he was at liberty to build such a house with safety; you know that it is the custom to search the title, to find out whether there is a cloud on the same or not, and careful business men are in the habit, before putting up a building, to have a title searched. Don't you think that in reimbursing the owner of that building, in addition to the architect's expenses and the actual material and the labor on that house, you would deem it necessary to reimburse the man who searched the title and made it possible to put the house up safely? A. I don't think so; not as a part of the expense necessary for the construction of the work.

Q. Let me understand exactly what you mean when you speak of the construction of the work of any enterprise. Suppose you were to build your Nicaragua canal to-day, and you were to issue a prospectus to the persons whom you wanted to interest, as, if I recollect correctly, you did once before, and you gave therein the cost of constructing the canal, would you not in such prospectus mention the cost of administration in the New York office and in Nicaragua? A. I don't know.

Q. Is it not a fact that you did do so; just tax your memory and try and remember whether your prospectus did not provide for the cost of administration? A. You will probably see, however, that we have included for engineering and administration expenses and incidentals a
(745) certain percentage of the actual cost of the work.

Q. Is not that part of the cost of construction? A. I have before stated that I regard it necessary to include in

the cost of the work a certain percentage for expenses of administration and engineering, technical and other expenses.

Q. By administration expenses you mean salaries of officers and clerk hire? A. Certainly, there must be some.

Mr STINE: That is all.

CHAIRMAN: Please let us know whether you would include traveling expenses? A. As part of the general expenses of the office, yes.

CHAIRMAN: That is all.

Mr. ROBERTSON: Q. Do you mean the traveling expenses of the general office of the Company or traveling expenses incidental to the work of construction? A. I mean necessary to the work of construction; I mean if an engineer is to be sent out, his salary and his traveling expenses must be paid, and, if the manager also has to travel, his passage or his ticket is chargeable to traveling expenses, and that is in the percentages which an engineer generally allows for in his estimate.

Mr. ROBERTSON: Q. Suppose, for instance, the President or the Treasurer or the Secretary visits a foreign country and makes expenses in attempting to obtain modifications of contracts, would you consider that these expenses were included as part of the cost of construction? A. Not at all.

Q. They would be within the administrative expenses of the Company? A. Why, certainly.

Q. My friend called your attention to the case of an intending builder of a house, and asked as to the legal ex-
(746) penses necessary for searching the title; would you consider that the searching of the title was a proper charge against the building of the house as distinct from the value of the land itself? A. As a proper charge, yes.

Q. I am speaking of the cost of constructing a house. Suppose I bought a piece of real estate, and I went and retained my friend to search the title on the records; now, suppose that later on I determined to build a house, and I carried out my determination and actually built a house; suppose then I wanted to sell the house to you, and offered to sell it to you at a price to simply cover the cost of what I had expended in building the house; would you expect to pay the legal expenses incidental to it? A. No; I would pay you for the cost of construction; that is, the price of the house in the market.

Q. Suppose I said to you I have bought this real estate, and I have built a house, but I find that I cannot run the house at a profit, and I am willing to sell it at what it cost me to erect the building, would you expect to find in

my charges the legal expenses of searching the title to the the real estate before the building was there? A. No, sir; I would not.

The CHAIRMAN: Do you throw in the lot, then?

Mr. ROBERTSON: Q. I am speaking of paying for what I expended on construction. Now, in reading this Convention, do you find, or do you not find, that the Cauca Company has surrendered to the Government the franchise and the railroad in its possession in return for getting back from the Government what it shall prove to have expended in the construction of the work? A. Just exactly what I say and nothing more.

CHAIRMAN: Q. Do you compare it to a sale for cost? A. What I understand is that the Company is going to be reimbursed for the necessary labor and material actually (747) applied to the construction of the road; that the necessary technical expenses required also, from an engineering point, to build it. That is what an engineer would estimate for if he had been sent out, and he would have allowed so much percentage for administration expenses.

Q. After reading this Convention, your impression is that the Government was to reimburse the Company for the cost of the road? A. I do not see anything more.

Mr. ROBERTSON: Q. That is, what is properly chargeable to construction. But suppose, for instance, that, on looking into the claim of this Company at a certain time, the Government had asserted that the Company had forfeited its franchise by failing to complete the work within the time stated in the concession, and you found that the Company's president, or general officer, had visited Cauca to negotiate modifications and obtain the cancellation of the recission of the concession, and that he charged some 25 or 50 thousand dollars for his own loss of time, seeing the Government at Bogota, endeavoring to modify the rescission, would you consider, as an engineer, that that was part of the legitimate expenses of the construction of the road? A. Not at all; he would be trying to save himself.

Q. Suppose, for instance, that the Company had made an agreement with the Government to actually construct the road within, say, 4 years, and that they then found that they had calculated without any funds, and, upon finding themselves without funds, and in a position of inability to carry out the contract, that they then had employed agents to sell bonds, would that be part of the necessary cost of construction? A. Not at all.

Q. And, if I understand you aright, by saying that certain administrative expenses are to be included, you mean such engineering expenses as are necessary for the

construction of the work, but you do not mean to in-
(748) clude the general expenses of the enterprise? A. Quite so; not at all. I mean such administrative expenses as are included in the construction of this work, and would be appraised as part of the value of the work. That is to say, if you go there now and appraise the road and all its different works—

Q. Now, do you recognize the difference between general expenses of a company owning and handling an enterprise and the expenses incidental to the construction of any concrete works which the Company may have in hand? A. Certainly.

Q. Now, in all costs there would be two classes of expenses—that is, first the general administration expenses of the enterprise, and then the cost of the physical material and labor necessary to put up the work for any particular branch of the business? A. Yes.

The CHAIRMAN: Q. Mr. Menocal, do you think that by going to the Cauca we could form a complete estimate of the general cost of the work? A. After you had a general knowledge of the country and the difficulties in doing the work of that kind in that country, I should say yes.

The CHAIRMAN: Q. Could you, by measuring up the actual physical work done, get any idea of the salaries that were necessary in paying officers in carrying on this work? A. You can get a very careful estimate of the work done.

Mr. ROBERTSON: Q. I suppose the information could be obtained from sworn testimony? A. Certainly; and an inspection of the road would be the check.

Q. Is it not your view that these provisions require that the Commission shall visit the road on the ground;
(749) that having finished the evidence on behalf of the Government the Commission should ascertain whether work properly representing such expenditures as claimed by the Company has been put on the ground; is not that so? A. Certainly; it would be a check which the Commission is called upon to make.

Mr. STINE: Q. Would you consider that so, even if a Commission of Government experts had examined the road after it was handed over by the Cauca Company, and had filed a report with the Government that they found the road in an improved condition over the condition in which it originally was when handed over by the Government to the Company? A. I still regard it necessary, in the face of this agreement, unless this agreement was modified.

Q. You have not answered my question, but do you want that to stand as your answer? A. Yes; under the terms of this agreement it is necessary to go.

Q. Is it not a fact that a year will make a great difference in the physical condition of a road? A. If it has not been properly maintained; yes.

Q. Is it not a fact that, if it has not been properly maintained, that the derailments are apt to be more marked? A. Certainly.

Q. Suppose the derailments amounted to 100% more than when the road was in the hands of the Company, would not that indicate a great neglect in the upkeep of the road? A. It would be due to that or to imperfect construction.

Q. But, assuming that there was nothing to show imperfect construction in the report to which I have referred, would it not indicate that the deterioration was entirely due to improper maintenance? A That is so.

Q. Do not things change very rapidly in that country, (750) unless carefully looked after? A. They do; but a well-constructed road would last a number of years before the deterioration begins. I have have a great deal of experience with that.

Q. I will call your attention to certain facts which occurred before this convention was negotiated, and I should like to get your opinion on the same Several plans were submitted by the Government to the Company, which called for the appointment of a number of engineers, who were to inspect and report on the condition of the road of the Cauca Co. The representatives of the Company rejected these propositions several times, and refused to make any convention on any such basis. What they desired was an agreement with the Government which would obtain the repayment to them of whatever moneys they might have legitimately expended. This is the Company's side of it, of course. From that point of view, do you still maintain that the interpretation of the words "*obras y trabajos*" should be strictly limited to the engineering sense you have given them? A. I could not give any other statement in this matter, Mr. Stine; there is only one interpretation to these words that I know of. I know of no other. I do not regard any other expenses in any way as part of the cost of the work; that is my opinion. I am called here simply to give an honest opinion in the matter.

Q. No one is imputing anything to the contrary.

The CHAIRMAN: Q. Is the meaning of the words different in this country than as used in Spain? A. It is not entirely; not necessarily. I have made no contracts with Spain.

Mr. STINE: Q. Is it not a fact that the word "*obras*" is used in a different sense? A. Yes.

Mr. STINE: Q. One can say "*obras de un autor*," for instance? A. Yes, you can say so; you can say "*obras* (751) *de un autor en tres volumenes, la obra de Cervantes*," but the labor of writing the book—the labor of the writer in making up the book—is "*trabajo*."

Q. Does that refer to the physical work of writing? A. Writing is a physical work.

Q. If you wanted to pay for the "*obras y trabajos*" contemplated in the writing, would I pay him for the work of actual writing only? A. No, you would pay him for the "*obra*" completed, whatever price it might have.

Q. And in that respect would it be different from paying a promoter for his "*obra*"? A. What "*obra*"?

Q. Any kind that you wish? A. The cases are not similar; you might pay one painter $50,000 for a picture, and another one might come along to whom you would give only five cents.

Q. Quite so; I was going to point that out to you. Now, suppose I owned a painting by Meissonier, and some one came along and damaged it, and I sued for the value of the Meissonier; would the value be gauged by the oil and paint and canvas that went into it? A. No, by the value of the painting; now, if this railroad had gold rails, it would also cost more; if it had silver bridges it would also affect the value.

The CHAIRMAN: Gold rails can hardly be considered necessary as part of the cost of the work—as far as the cost is concerned.

Mr. STINE: Q. Suppose that it was the case that Mr. Cherry and Mr. Schramme, Mr. Cherry being President of the road, were having a controversy with the Government of Colombia, and the Government had passed a law forfeiting their charter, but had allowed them to remain in possession of the charter and the railroad, and had done nothing to take the same away from them; and had given them a peremptory summons to appear before the Govern- (752) ment's representatives in Bogota, within 30 days, to arrange the difference between the Company and the Government; do you think that in that case their compensation and the expenses of the trip would be a necessary part of the indemnification for constructing that railroad? A. I beg to be excused from answering that part of the question. I would like to be limited to an engineering point of wiew; what you ask me now is a legal matter.

Q. Exactly. Then there is a question of interpreting

this contract, which has its different side from purely engineering side? A. I do not know; I only speak of this paper before me.

Mr. STINE: That is all.

Mr. ROBERTSON: Q. Adverting for a moment to the matter of the Commission going to South America, do you find anything in the Convention to which your attention has been attracted which warrants the Commission in avoiding the trip to South America because of any difficulty that the intervening time and natural elements may have occasioned in the work of examination of what they may find when they go there? Does that, in your opinion, change the wording in any way? A. I do not see that it does, for I understand that the contractor remains in possession—

Mr. ROBERTSON: That is all.

The CHAIRMAN: We are much obliged to Mr. Menocal for his attention this morning.

EMMET R. OLCOTT was then called as a witness on behalf of the Government, and the usual oath of affirmation administered by the Chairman.

EXAMINED BY MR. ROBERTSON:

Q. Mr. Olcott, will you kindly state your full name, (753) your place of residence, and your occupation? A. My name is Emmet R. Olcott; I am fifty years of age and a lawyer by profession.

Q. How long have you practiced law, and where? A. I have practiced in New York since 1873. During the first years of my practice I was a member of the firm of Coudert Brothers, and afterwards I formed the firm of Olcott & Mestre, which was afterwards changed to Olcott, Mestre & Gonzales, under which name I am now practicing.

Q. Kindly state how long you have been familiar with the Spanish language? A. Since '73 I have had a great deal to do with Spanish-speaking countries; my firm has represented the King of Spain, the Republic of Mexico, and various other countries in Central and South America, and during that time I have had a great deal to do with the examination of contracts for the performance of engineering works, concessions from foreign governments and translations of the same.

Q. Is it not a fact that your firm is known generally in the United States and abroad as specialists in this line of business? A. Yes, it is; I have had occasion to give testimony before courts and referees in connection with questions of law and translating, and my firm is very well known throughout the country as specialists in this work

throughout Europe, the United States and South America.

Q. Now, will you kindly look at the original Convention between the Government of Colombia and the Cauca Company, dated Jan. 4, 1897, and give us your translation of the 2nd paragraph or article? A. "The Company renounces absolutely the concession set forth in Article 1 of the contract approved by Law 16 of 1890, and is to deliver to the Government of Colombia within 15 days next following the date on which this Convention shall have been approved the Cauca railway, with all its fixtures and rolling stock on hand, works, structures, tools, instruments of all kinds, accessories, etc., etc. In consideration the Government Colombia is to pay to the Company a just indemnifi-
(754) cation for all kinds of work that the Company shall have done during the time the enterprise [the English is enterprise—the matter or enterprise—you can say enterprise] has been under its charge, and for the rolling stock and additional material it has furnished for the purposes of the railway and that are now on hand."

Q. Now, please state the meaning of the word "*obras*" as it first appears there and let the Commission know whether that represents or refers to the physical or concrete work or the mental operations or the general Company expenses? A. The word "*obras*" is a completed entity as such. It refers generically to that which is the product of work or labor, mentally or physically; in other words, it may be said to be a completed entity, resulting from some kind of toil, labor, work. It is used practically in the same sense in the French language, the word in that language being "*œuvre.*"

Q. Do you find the word used in a singular or plural sense here; is it singular or plural? A. It is plural—works; but in the English I would say "work," that is the work we use, generally "works" being applied in English to a group.

The CHAIRMAN: Q. When you say that I think you had better be a little more specific in your definiton of the word "work," because it has so many different definitions.

(The WITNESS:) I should—if I continue—

Mr. ROBERTSON: Q. Well, I call your attention to the word "*obras*" as it appears here in connection with the other physical entities enumerated in connection with it, and ask you whether, as used in that connection, it refers to a completed work of some kind? A. Yes, and the word "*trabajos*" would include that which is incomplete.

Q. Look further in the same article and you will find the words "*obras y trabajos.*" Kindly read those words

(755) in Spanish and the words following them to the completion of the sentence wherein they appear, and state the forces of these words, "*obras y trabajos*," as you find them used there. A. I find in Spanish the equivalent for the following in English: "A just indemnification (or indemnity) for the (then I find the following words), "*obras y trabajos*;" (I would translate that as) all kinds of work (all work);" then follows the text of the Convention, which says what the Company shall heve done—"*ejecutados*."

Q. During what time? A. The time while the enterwas under its charge, referring to the Company—in its charge instead of under.

Q. Does that refer, then, to the executed works? A. Yes, in classes; it means, for instance by the word "*obras*" everything, as I have said, a completed entity; for instance, a bridge finished, a station erected, rails laid and the like; "*trabajos*" is the work that we put into all these operations until completed; these words mean, in my understanding, the work that is actually completed in its entity, and the work that is on the ground in place, representing mere manual labor.

Q. Do you find any provision in that section that would warrant the Commission in allowing, as a part of the cost of the construction of the railroad, of salaries, say, of directors of the Company owning the franchise, the traveling expenses of officers of the Company endeavoring to raise funds for the Company, or endeavoring to compromise differences which may have arisen between the Company and the Government which issued the Concession? A. Nothing whatever.

Q. And I assume you have drawn many such contructs as this? A. I have translated them; they have passed under my hands from all countries—from all countries—from Mexico down to the lowest country which has had any of such class of work.

Q. Kindly translate the 3d article of the Convention? A. "The Government of Colombia and the Company (756) agree in advance as a just and only indemnity (or indemnification) a sum equivalent to that which the Company shall prove to be the cost of all work done [the words being "*obras y trabajos*"] by it in the construction of the railroad aforesaid, and in the rolling stock, tools, etc., etc. [I suppose the best word there is] accessories for use in such road."

Q. Now, do you find in that article any justification for including the traveling expenses of officers to raise money on bonds, or to compromise legal difficulties between the Company and the Government. Do you find any war

rant for the inclusion of such expenses as a part of the actual cost of the construction of the railroad? A. None whatever; in my opinion, they are foreign to that clause.

Q. And do you say that both as a lawyer and as a gentleman familiar with Spanish contracts? A. I do.

Q. Kindly read the fifth article; you need not translate it—it is pretty long—and state whether or not the words "*obras y trabajos*" there found refer to the work and labor of constructing the works comprising the Cauca Railroad? A. In my opinion, they do, and to that only.

Q. Do you find in the 5th article any provision touching the necessity for a visit by the Commission to the railroad itself? A. I do.

Q. Is that mandatory or merely suggestive in its nature? A. Mandatory, in my opinion.

Q. Leaving no discretion to the Committee? A. No, sir.

CROSS EXAMINATION BY MR. STINE:

Q. Mr. Olcott, in reading the language of this contract, would you consider that this Company should be reimbursed for a bridge which had been destroyed on the old line, and rebuilt; would that be part of the construction (757) contemplated in this contract? A. You mean twice the cost.

Q. No; assuming, as was the case, that some twenty kilometers of road were given, donated by the Government to the Company at the time of making the concession, and while the Company was engaged in operating the road and building the extensions, a bridge on the old line has been swept away and rebuilt, would that, in your opinion, be part of the construction for which they should be indemnified? A. In my opinion, that would be a case that would largely depend on the contract.

Q. Assuming that there was nothing said in the original contract, take the language of that Convention? A. Then I would say—Do I understand that this bridge was on a part of the completed line, and while the construction was being completed it was destroyed by the elements?

Q. Yes. A. In my opinion, the Government would not be responsible for the reconstruction of that bridge, because it was part of the risk assumed by the contractor in taking over a part of the line; all that was incident to that was assumed by the contractor.

Q. No; now, we have come to the point where the Government has agreed to reimburse us for construction; now, is there anything in that contract which will show that the Government is not to pay us for that bridge? A.

Permit me to make this explanation: Knowing, as I do, the paper before me, I assume from that that the contractor undertook to complete something partially constructed, and consequently that part of the line already there was not new work in the field of construction; to complete it was part of the contractor's responsibility, liability assumed; the contractor was to get the benefit of the completed line as far as completed, and, consequently, the contractor was obliged to assume all the risks incident to that part of the line, having a corresponding benefit, and the Government would not be called upon to replace anything being used by the contractors.

(758) Q. I did not put that to you. Now, this Convention recites that all differences between the parties shall be considered as settled; the Cauca Company shall turn over the railway to the Government; that the Government shall take the road back, not only the new part, but also the old part, which it gave to the Company, the Government having taken off our hands the responsibilities for that part of the line; in your opinion should the Company be paid for that bridge by the Government? A. No.

The CHAIRMAN: I do not think the question is quite clearly understood by the witness, for it was not really reconstruction of an old bridge that was done, but the substitution of a new steel bridge for a wooden bridge—

(By WITNESS:) That is a horse of a different color; but, answering the question of counsel, if I take anything and agree to turn it over again in the shape in which I found it, necessary wear and tear excepted, it behooves me to turn it over as I found it, and, there being a bridge there when the Company took possession of the road, the Company was bound to have a bridge there when it turned it over again to the Government. If there was a substitution of one class of bridge for another, with the assent of all parties, of course that is a different thing.

Mr. STIXE: That will do just as well for my purposes.

Q. The substitution of this steel bridge on such a railroad as that is what is known technically as "operation," is it not? A. In this case, no.

Q. I do not ask you about this case; I said generally, ordinarily known? A. The substitution of a bridge of one kind for another, when the road is in operation is considered a part of operation expenses, but is charged up, in railroad bookkeeping, as I understand it, to construction.

(759) Q. Is it not, as a matter of fact, charged to maintenance? Now, if you would include a bridge which was substituted in that way, why would you so include the bridge and not include the maintenance of the track also;

suppose we put in new rails of a heavier weight; new rails to replace old and lighter ones, would they not be included also? Suppose we substituted for wooden rails fifty-pound steel rails, would that be part of operation or construction? A. It would depend entirely upon the contract of the constructor.

Q. I mean on the completed road; I ask for your opinion under this convention? A. I should say it will not be comprehended in this.

Q. Why not? A. Because that would be, as I say—the test in my opinion would be the benefits derived by the contractor from the use of the completed road; if he desires to substitute one thing for another for his own convenience, and for the better use of the road then completed, that would be the risk assumed by him of its being subsequently accepted by the other contracting party. Whatever he might do in the way of improvement, he would take the risk of having accepted or rejected by the other contracting party at the end of the contract.

The CHAIRMAN: Q. The Chair would like to ask the witness whether if this Commission went down there and measured the road under those changes, whether that would not make any difference in the amount of money to be paid for those— A. I take it that the Commission would have to be governed by the original contract, in which is provided all the obligations of the contractor, and then an inspection of the work would show how closely the contractor had complied with his obligations, what is on hand and so on; anything of that kind would be just similar to a con-
(760) tract for building a house, where the specifications call for certain articles to be put into the construction in a certain way, and then the contractor thinks it would be better, for instance, in the country to have iron pipes instead of lead pipes for plumbing, and he made that change, he would make it subject to the risk, although it may be convenient to him to have these iron pipes, to the acceptance or rejection of it by the other party to the contract.

Mr. STINE: Q. Suppose there was nothing in the original contract calling for the acceptance by the Government on the passing of the road? A. Nothing in the contract at all?

Q. No. A. You would be at the mercy of the Government.

Q. Suppose that we are not obliged to have the Government accept the road at all? A. Still be at the mercy of the Government.

Q. Be at the mercy of the Government whatever it was? A. Yes.

Q. That is not the same thing, is it? A. Yes, in that country.

Q. But theoretically it is not the same, is it? A. Well, the law differs entirely in different countries. If a contractor goes beyond the strict letter of his contract, he he has no claim whatever on the other party, as a matter of law.

Q. Have you been retained in this case? A. No.

Q Did you not act as translator of these contracts? A. I did.

Q. Were you paid for doing it? A. I was.

Q. And are you under a retainer of any kind from the Government of Colombia? A. No.

Q. Have you been in the habit of attending to business for that Government? A. I have done business for that Government.

Q. And you have been frequently interviewed by representatives of the Government during the progress of this case? A. No.

Q. Not at all? A. Only in regard to translations.

RE-DIRECT EXAMINATION BY MR. ROBERTSON:

(761) Q. You did mak the translation, did you not, Mr. Olcott? A. Yes.

Q. And were you paid for it? A. I was.

Q. You have been asked on the point of administration expenses the cost of administering or maintaining the work of the road. Will you give the Commission the benefit of your views on that point? A. Well, as I understand the difference in administration expenses, where there is an estimate made of cost, the estimates are made and they have nothing to do with the administration expenses of the road. I wanted to define that more carefully in answer to the question Mr. Stine propounded to me. Now, what is the ordinary cost under a contract is one thing and what is the cost of administration of the road, *per se*, is entirely different. The operation of the road is one thing and the construction of the road is an entirely different thing. What I wanted to say is that in some of the questions that Mr. Stine propounded to me he referred to matters as relating to the operation of the road, whereas I referred to them as relating to the construction, and they are entirely two different classes of things.

Q. You fail to find that this Convention calls for the repayment to the Company of the expenses of operating the road after it was constructed? A. That is exactly the way I take it. This is a Convention between the Government, on the one hand, and the contractor, on the other hand, by

by which the Government agrees to pay the cost of the construction of the work done.

The CHAIRMAN: Q. Then, if there were any profits from the operation of the road, would the Government have a right to participate in them? A. None whatever.

Mr. ROBERTSON: Q. And the Company puts the road in at what it has cost it to construct it as a structure? A. Yes.

(762) Q. Now, take a case like this: Suppose that the Company has demanded a very large sum from the Government, including all operating expenses, official salaries, and expenses of almost every nature, including all its disbursements at New York, and all its other expenses during its existence; suppose that the claim had been rejected by the Government, and the parties had met in a convention of this kind, would you regard this as a meeting as upon compromise ground, as a fixing, so to speak, of a sum for the liquidation of any claim on the part of the Company. Speaking now from your familiarity with such matters as this, and also from a legal standpoint, would that, or would it not, necessitate the exclusion from consideration of the Company's claims not mentioned in the contract and the Government's claims for breach of the contract, and confine the parties to the compromise basis finally put into the contract itself? A. Ordinarily so; in other words, there might be a claim to compel forfeiture of all work done, the parties losing what they put in, and their personal services in the work, in obtaining funds and the like, the very road-bed made, the rails laid and material introduced. Instead of that forfeiture being exacted here, the Government takes a middle ground in which it agrees to pay what it the exact cost of the work done, exclusive of whatever may have been done by the other contracting parties in the way of obtaining funds and the like.

Q. Now, addressing you as a lawyer, is it not a fact that when a compromise agreement has been finally signed by the parties in a controversy, the very purpose of compromise requires that no consideration be given to any claim of either side except such as appears in the compromise itself? A. In all conventions of this kind the rules are practically laid down in the document itself, and the subject matter of the document governs.

(763) Mr. PEÑA: Q. Will you kindly read Article 3. Suppose that I have a contract for work and I am not myself able to carry it out, and that I sell it to someone, and I require in the selling that I must be paid something for having the concession at first; do you consider that in that article, inasmuch as I must be paid for construction the

sum that has been paid to me to be included in the sum to be paid? A. Not at all; that has nothing to do with the cost: that was a private agreement between the first contractor—*Concessionary*—and myself, and enters in no way at all into a part of the cost of the road.

Mr. PENA: Q. Suppose that I have no money to build the road, and I am obliged to mortgage property or to make obligations and have loans, at any price whatever, and have to pay interest and make discounts; should such discounts and mortgages and interest be considered in connection with the cost of construction? A. Hasn't the slightest thing to do with it all. It is supposed when a man presents himself to make a contract that he is able to perform what he contracts to do, and it is his misfortune—his loss—if he is not able to do so. Whatever he may do is done in the hope of gain and reward, and whatever efforts he may make, however Herculean, have nothing to do with the case; a man agrees to do something for something; on the other hand, the Government contracts to get something.

Mr. PENA: Q. And do you think it is the particular case in this agreement, inasmuch as you have read that article? A. I say that does not enter into part of the cost of what is to be delivered over in the first place; the road as it was, reasonable wear and tear excepted, the work done since then, the completed work and the work incompleted, (764) rolling stock, and all such property of the road referred to in the Convention—that is to be paid for at cost.

Mr. Olcott excused by Mr. Robertson and Mr. Stine.

The CHAIRMAN: We are much obliged to you, Mr. Olcott.

It being 1:30, the Chairman declared the meeting adjourned until to-morrow at 9:45 A. M.

(Signed.) LEWIS M. HAUPT, Chairman.

MANUEL H. PENA,
Commissioner for the Government.

C. F. SCHRAMME,
Commissioner for the Company.

HAROLD R. MILLER, Secretary.

Twenty-fifth Session.

(765) Held at 30 Broad St., on Tuesday, August the 24th, 1897, at 9:45 A. M.

Professor F. J. Amy called and sworn on behalf of the Government—crossed examination of Professor Amy by the Company—Mr. Ponce de Leon recalled by the Company—Cross examination by the Government—Re-direct examination by the Company.

Present: Commissioners, attorneys and counsel as before.

The attorneys agreed to proceed with the examintion of Mr. F. J. AMY, witness for the Government. Mr. AMY was called to the stand, and the usual oath of affirmation was administered by the chairman.

EXAMINATION TAKEN UP BY MR. ROBERTSON:

Q. Professor will you be good enough to state your age? A. I am 59 years of age.

Q. Residence? A. New York, Staten Island, Greater New York.

Q. Place of birth? A. Porto Rico, Spanish West Indies.

Q. Occupation? A. Literature, and as a teacher of the Sanish and English languages, the greater part of my life; also, as a journalist.

Q. What is your native language? A. Spanish.

Q. How long have you lived in this country? A. Altogether about 25 years, off and on; not continuously.

Q. Before you came to this country were you living at Porto Rico? A. From the time of my birth until I was
(766) about 14 years old; then I came here; subsequently I returned to Puerto Rico.

A. At what period? A. About five years after. At other times I have been there about 25 years altogether.

Q. So you have never lost the full use of your native tongue? A. No, I have published and still publish works in the Spanish language.

Q. Have you had submitted to you for your opinion as to its meaning, and as to a correct translation of it, the Convention of January 4th, 1897, under which this Arbitration is now sitting? A. I have had, yes, sir. I have had a copy of the document in my hands, and, I have, I think, studied it pretty clearly. Especially with reference to the words "*obras*" " and *trabajos*."

Q. Have you seen the Spanish original of the Spanish copy? A. I have seen a Spanish copy and a translation of it.

Q. I wish you to look at the 2nd article of the original Convention, which I now hand you and translate that article into English. A. "The Company surrenders entirely the privilege referred to in Art. 1st and 2nd of the Contract approved by the Law 16 of 1890, and shall deliver to the Government of Colombia, within the 15 days next following to the one when this Convention be approved, the Cauca Railway, with all its fixed materials (or fixtures), roiling stock existing, works, buildings, tools, utensils and all classes of appurtenance, and so forth, and so forth; in consideration thereof the Government of Colombia shall pay to the Company a just indemnity for all works which the Company have executed or done during the time in which the undertaking or enterprise has been under its charge, and for the material, rolling stock and other elements imported, destined or intended for the Railway, and which exist at present." That is translated literally, as I understand it.

Q. Mow, please look at the word "*obras*," as it first (767) appears in this Article, and state in English what the meaning of it is there. A. Well. The meaning of words is determined entirely by the connection in which they are used. In this agreement "works" refers to the material works; the works of construction of the Railway. Generally speaking, on engineering work, in the Spanish, any one who is fairly familiar with the language knows that the words "*obras*" and "*trabajos*" mean the material work directly relative to this construction work. That alone would be a sufficient expression of the meaning of the word.

Q. Have you prepared any notes as to the meaning of the words "*trabajos*" and "*obras*" as contained in this Convention? A. Yes; I have. I wanted to be precise in my explanation, and made a special study of it, and have written it.

Q. Have you that written opinion with you here; can you submit it? A. Yes, I have; I would prefer it that way, because that is exactly my opinion in regard to the meaning of those words.

Q. If you have it, will you kindly produce it and read it, to that we may have it in the minutes. A. Now, for instance, I see in the translation of the agreement that has been submitted to me, they have been translated as "works of all kind done;" instead of that, it should be "work of construction;" that would be the correct expression. The words "*obras y trabajos*" would alone be sufficiently explicit in this connection for any one fairly familiar with the Spanish language; but, should there be any doubt as

to the scope of their meaning here, this doubt is entirely dispelled by the expression "*en la construccion de la expresada via ferrea*," which means "in the construction of the said railway," which the framers of the compromise agreement saw fit to insert, despite the evident tautology, in order to make their meaning so clear as to obviate all possible misapprehension on that score. There can be no (768) question as to the object of the wording thus made use of and which was intended to restrict the amount of the indemnity to the actual disbursements incurred in the building of the road, to the exclusion of all other claims or disbursements not directly chargeable to the work of construction; that is exactly what it means.

Q. So that it would be necessary to ascertain first just what the actual expenses of the construction were, and then confine the indemnity to those direct expenses of construction? A. Everything strictly relating to this work; that is what is understood by "*obras y trabajos*," the direct engineering work, the intellectual part of it, the direction of the material part of it, etc.

Q. But, if I understand you correctly, the expenses here referred to as being the measure of the indemnity are those which are directly related to the construction, and not the expenses, for instance, of the general management of the Company that owned the concession. A. That could not be understood so; the expression "*obras y trabajos*" here refers simply to material work, and it is understood, of course, that there must be a directing intelligence; and the result of that directing intelligence is the material work accomplished; that is the meaning I give.

Q. Would that directing intelligence include the general officers of the Company getting salaries for managing its general offices? A. No; only the salaries of the employees on the ground. I do not see any justification for so much discussion; any Spanish scholar would know the meaning of the words, and there does not appear to be any subject for discussion at all.

Mr. STINE: Q. Do you consider Mr. Ponce a Spanish scholar? A. Yes; I certainly do.

(769) Mr. STINE: Q. Well, he has testified exactly opposite to your opinion. A. As far as I see, there is no necessity for a discussion on the meaning of the words.

Mr. ROBERTSON: Q. Kindly look at the 3rd article and translate the same into English. A. "The Government of Columbia and the Company acknowledged beforehand as a just and only indemnity a sum which is an equivalent to that which the Campany shall have proved to have disbursed in the works executed by it in the construction of the said

railway, and in the materials, rolling stock, tools, etc., etc., imported for the use of the said railway."

Q. Do you find anything in that article which directs or imports that expenses not directly connected with the actual construction shall be included in the indemnity? A. Most certainly not; it says *in* the actual construction, which refers to all expenses incurred *in* construction, in the building of anything. It is a complementary article.

Q. When you compare this article with article 2, you find a redundancy growing out of a repetition of the substance of the 2nd article? A. Yes, and that, by itself, would be sufficient to explain that, but, in order to place it beyond a doubt, the third article may have been added. I can see that the person who made the document had a thorough knowledge of the Spanish language. He, or they, wanted to preclude the possibility of any claim outside of the expenditures included in the construction and in the materials used in the construction of the railway.

Q. Do you find in the third article any direction or implication that the salaries of the officers of the Company or the travelling expenses of the officers of the Company (770) on trips to sell bonds, negotiate loans, or settle differences with the Colombian Government, or that the cost of obtaining the original concession under which the Company intended to proceed, should be included as a part of the indemnity to be measured by the expenditure on the construction of the road? A. Certainly not, because this is entirely excluded by the expression "*en la construccion de la via expresada.*" I think that this was inserted especially for the purpose of excluding all such claims.

Q. What word would be used provided such claim had been made by the Company and had been rejected by the Government prior to the forming of this convention? A. That clinches it; that shows that it was evidently the object to exclude all such claims.

Q. Now, on the other hand, can you, as a professor of languages, take into consideration what the parties may have said between themselves, if not contained within the contract itself? A. Certainly not.

Q. Rather, you are confined to the words in the contract in order to ascertain its meaning? A. Yes.

Mr. STINE: Are you now examining him as a professor of languages?

Mr. ROBERTSON: Yes.

Mr. STINE: Well, I do not want to object, but he knows nothing of the law.

Mr. ROBERTSON: I am not asking him about the law.

WITNESS: I have nothing to do with outside matters,

but I have translated the agreement according to my knowledge of the subject.

Q. Now, do you find in Article 2 that the Company surrenders two things: first, immediately, the concession, and then surrenders, or agrees to surrender and deliver the material works? A. Yes.

Q. Do you find that there is to be any valuation put upon the concession for the purpose of finding the cost of expenditures made upon the road as constituting the amount of the indemnity, or do you find that the conces-
(771) sion and the road are both to be surrendered, and that the indemnity is to be confined to the expenditures made upon the construction of the road? A. That is it.

Q. Does that strengthen the view that nothing is to be paid for the concession as part of the indemnity? A. That is the way I understand it.

Q. Now look at Art. 5; please state in what sense the words "*obras y trabajos*" are used in the first paragraph of that article. How do you translate the words "*obras y trabajos*" and "*materiales*"? A. Well the material works and the materials referred to. I say "*obras*" and "*trabajos*" in Spanish are very much alike, only that an "*obra*" means a completed thing; "*trabajos*" is the work or the labor on the ground, such as moving the ground, preparing it for a structure, etc.

Q. What is the Spanish equivalent for the word "laborer" A. "*Trabajador.*"

Q. Does that stand for what we know in English as a common laboring man? A. Yes.

Q. Well, now, does not the word "*trabajos*" in Spanish mean or refer to such intellectual labor as that of engineers in charge? A. Yes, it does also.

Q. So that when, under the terms of this convention, you include the labor of the engineers necessarily employed in constructing or laying out the road, that is a part of the things to be paid for? A. Certainly; I think so, for that is a necessary part of the works of construction; without that the construction could not be carried out; everything necessary for the construction must be taken into account.

Q. Well, in saying "everything that is necessary for the construction," do you refer to the corporate expenses or to the local force of men, engineers and others essential to construction locally on the ground? A. I refer to the latter.

(772) Q. Kindly look again at the 5th article and state in what sense the words "*obras y trabajos y materiales*" are used as they appear in connection with the provision that the commission shall inspect the works? A.

They mean the works that have been executed; it cannot be anything else.

Q. Now, going on further in the same article, please see whether you find the words "*obras y trabajos materiales*" again used. Please state the meaning of those words in that connection. A. The meaning is just the same as in the other places in which they have been used. It means the material works that have to be performed, both intellectual and physical.

Q. Do you find in the fifth article any provision that refers to a visit by the Commission to the road itself, to inspect the road on the ground? A. Yes; it says "shall inspect on the ground the works of the railway and the rolling stock, with a view to the confrontations and necessary verifications for determining," etc., etc.

Q. Do you find that the Commission has any discretion as to whether it shall go or shall not go, or is that provision mandatory? A. It is mandatory, because it employs the future tense; that is used imperatively in Spanish as "shall" is in English.

Q. You say, then, that it is a mandatory provision which requires that the Commission shall go there in order to check or verify the entries of expenditures and so on, as found in the books and vouchers? A. That is what I understand—relating to the construction of the road.

Q. Do you find anything in the fifth article in effect that the Commission shall inspect on the ground all work of every kind executed on the railway, and also inspect the rolling stock which is there? A. Yes; that is what I understand.

Q. Do you find in the 5th article anything which, in substance, requires that the Commission shall inspect the (773) works and materials? A. Yes; that is what it means.

Mr. STINE: Q. I would like to hear the words which express that. A. "*La tasacion de ellos*;" that means the appraising.

Mr. STINE: Q. Do you mean to say that paragraph says that the Commission "shall appraise?" A. It says so.

Mr. ROBERTSON: Q. Do you find that the Commission shall appraise, and that it requires that the Commission shall visit the works on the ground? A. Most assuredly; it says appraise; "they shall visit the work" means on the ground.

Q. Does not, in point of fact, the provision which requires the appraisal declare that the Commission shall inspect the road "on the ground?" Yes.

Q. What words are used to express "the works" in Spanish; what Spanish words are used in this article? A. "*Obras, trabajos y materiales.*"

Q. Now, do they or do they not refer to concrete entities? A. They do—concrete entities.

Q. Is there no doubt about that. A. I said before it was works of construction; it is limited to the works performed on the ground; it could not go outside of that meaning.

Mr. ROBERTSON: That is all, Mr. Stine.

Mr. STINE: Q. I find here in the Government's translation of Article five: "the Government of Colombia and the Company hereby authorize the Commission that shall be appointed in the manner hereinbefore indicated to fix the indemnity already mentioned, and such Commission (774) shall appraise the value of every kind of work done and material hereinbefore referred to." In your opinion, do the English words "every kind of work done and materials furnished" refer only to the physical work; I am speaking, Professor, of the meaning of those English words; I am asking you what that means in English? A. Every kind of work done on the spot relating to a railroad; in the light of the original—

Q. I am asking you nothing about the original Spanish words; what I am asking you is, what do those words mean in the English language? A. Every kind of work done, but only the material work done, including the administrative work necessary to carry out the material work in the locality, on the spot—for directing the work.

Q. You think that is the meaning of those English words, without regard to the original Spanish contract; you are a professor of English? A. Every kind of work—

Q. Do you mean to tell me and this Commission that when the English words are used, every kind of work done in the construction of a railroad, that you inject into them the meaning only done on the spot; that that is the meaning? A. When it says "in the construction," yes; because the phrase "in the construction" limits the meaning to all kinds of works referring to the construction itself.

Q. What I want to know is what you think according to the English; I want to get at your understanding of the meaning of certain English words. If I say I am contemplating the project for constructing a railway, does that language refer only to the engineering and other actual physical work? A. No, you are projecting the railroad; that is a project that you have—

Q. And refers to something more? A. May refer to anything.

Q. I mean as to the use of the word "construction:" I have a project for the construction of a railroad in South (775) America; does that refer only to the actual construction? A. Your question is "for the construction." There is a difference between a project "for the construction" and work done "in the construction;" there is a very important particle there.

Q. What does it mean "in" or "for" are used in that connection? A. When "in" is used, it means what is used in carrying on the work, and when "for" is used, it may simply mean the preparation for a thing which may be carried out, but which has not been attempted.

Q. Are you acquainted with Emilio Del Monte? A. I do not know him personally.

Q. You know who he is? A. Yes; I have heard of him by reputation.

Q. I mean the one 68 Broad street, a friend of the Government; if you do not know him, of course, it does not matter very much. Mr. Del Monte is, I belive, a Cuban and a man of high standing, I am informed; naturally, being a friend of the Government, and he has a somewhat different opinion as to the meaning of those words. In a letter of Prof. Haupt, he says:

Emilio Del Monte,
68 Broad Street,
New York.

New York, May 3d, 1897.

Mr. Lewis M. Haupt,
Care of Messrs. Haupt & Franklin,
118 S. Broad St., Philadelphia, Pa.

Dear Sir,—I have just received your esteemed favor of the 1st inst., and I beg to say the following: *Los trabajos y obras*, referring to railroads, appears to me to be a form of expression improperly used, since the word "*obras*" generally signifies bridges, viaducts, culverts, drains, retaining walls and stations, etc., while the word "*trabajos*" embraces (776) the preceeding items besides all the others that are made until the railroad is completely built.

And, in my opinion, in the value of the works of a railroad is included absolutely all the money disbursed for building it, with the exception of those outlays that refer

exclusively to the capital and the formation of the Company.

In a word, to the works should be charged the ordinary expenses relating to laborers, directors of the works and materials and, besides, those that appertain to its management as well as the judicial and legal disbursements, but not the expenses that refer to the issuance of loans, bonds, etc., for building the road.

Hoping that this opinion of mine may be of some use to you, I am,

Yours very truly,

(Signed.) E. DEL MONTE.

Now, then, his opinion and yours does not seem to agee? A. No.

Q. You stated a while ago that among Spanish scholars, there could be no difference of opinion in regard to translations? A. In regard to the meaning that should be placed on words. The expression "*obras y trabajos*," used in the connection in which it is—

Q. Do you know Mr. J. S. Elliott? A. No.

Q. Here is a letter to Prof. Haupt from J. S. Elliott, American Society of Civil Engineers: April 29th, 1897. Dear Prof. Haupt: Answering your favor of the 26th, lately received, I should say that the meaning of Article 3 is pretty plain. As requested, I send my translation. The verb *costear* (not *costue*) in Spanish means to bear all charges—pay all expenses and invariably refers to all expenses. "*Trabajos*" means work in full, everything completed when it is spoken of as "*los trabajos*." The two words, "*costear*" and "*trabajos*" strengthen each other. I have often read and heard the expression: "*No va a costear los trabajos*," it will not pay expenses, meaning that the returns will not pay for everything expended. "*Obra*" in Spanish is not generally taken in the broad (777) sense given to *los trabajos*;" it is the same as the French "*Oeuvre*," meaning a specific piece of work. It does not strengthen "*trabajos*" here, but was probably put in for the same reason that lawyers invariably give, bequeath, assign, turn over, and generally bedevil language so far as to create trouble where otherwise none would exist. The "article seems to have divided cost into two parts, one incident to construction in Colombia and the other covering importations necessary to complete the work, according to contract. It is hardly necessary to point out that administration charges, such as possible office rent, clerk hire, attorney's fees, etc., in New York, or

any other foreign place, should be distributed over the various expenses, and form a part of the same as much as the pay-rolls of the various gangs. Of course I refer to legitimate expenses. Trusting that my explanation and translation may be of some use to you, I beg to remain, very truly yours, J. S. Elliott.

Q. That does not seem to coincide with your views? A. No.

Q. Well, you will admit, then, that there may be a legitimate difference of opinion between right thinking and honorable and intelligent men on this subject when you see that Mr. Ponce, Mr. Schramme, Mr. Elliott and Mr. Del Monte all differ with you in your opinion on it? A. There may be a difference of opinion; but, according the terms of the agreement as I have read it, I think that even in English, "in the construction of the said road"—that is enough; even in English, or any language, I think that clear, and it was evidently put there in that way to exclude everything else.

The CHAIRMAN: Q. In order to make your meaning pearfectly clear as to what you intend, will you please explain to the Commission what you include in the construction of a railroad? A. By the construction of a road, I mean the material and labor that is requisite in order to (778) conduct the work and the intellect for directing the work, and all expenses included for that purpose enter into it, but nothing outside of that.

Q. (CHAIR:) Are you a railroad accountant? A. No, I have had no experience at all.

The CHAIRMAN: Q. Have you any knowledge as to what accounts should properly enter into the cost of construction of a railroad? A. A general idea, but I cannot speak as an engineer or a practical man would, but more or less I can form an idea as to what should be paid; I have been a business man myself, and know more or less—.

The CHAIRMAN: Q. Do you not regard an organization of some kind necessary for the conduct of the work? A. That all depends. A person may have capital and form an organization, but that organization has nothing to do with the material work of the enterprise.

The CHAIRMAN: Q. Can any physical work be carried on without having first been conceived in the mind of man, and without some organization being formed for its execution? A. I do not see that this has anything to do with the terms of this agreement; I do not know anything about it.

The CHAIRMAN: Q. Can you conceive of a condition

such as that? A. I know what common sense tells me—

Mr. STINE: I object to the witness making speeches.

Mr. CISNEROS: If you do not know, say, "I do not know," and that is the end.

A. It is a matter upon which I have not thought very deeply; consequently, I cannot venture to give a definite (779) answer on that subject; it is something that requires some thinking.

At the request of the chair, the last two questions of the chair were then read.

A. I do not know; I could not give a definite answer about that.

Mr. ROBERTSON: If I get the substance of the chair's question, it is this: Whether you can conceive of a project that was not original with yourself, or else was not conceived by some one else?

The CHAIR: Not at all.

Mr. ROBERTSON: I understand the question to mean exactly that.

Mr. STINE: He understands the question just as well as we do, Mr. Chairman.

Mr. ROBERTSON: Q. Do you find in this convention anything at all that provides for the reimbursement to the Cauca Cympany of any moneys expended otherwise than in construction, and when I say construction I emphasize the word "in" to indicate that the expenditures are to be confined strictly to the actual work of construction, and the intellectual work necessary for that special construction itself? A. That is exactly what it means. Nothing else.

Q. Do you find anything in the convention that contemplates the reimbursement to the Company of money that may have been expended for travelling expenses of its officers in trips—for instance, to Bogoto—to placate the the Government in the matter of the forfeiture of its franchise? A. I do not think these are proper items to be included in the construction; I think it is very explicit.

Q. If you were drawing an agreement to provide for the reimbursement of the expenses included in the construc-
(780) tion of the road as distinct from the general expenses which the Company may have made for all purposes, could you use any more definite language to confine the reimbursement to the actual construction work? A. There would be no necessity for such a thing; I think it was made to convey that idea to the exclusion of any other.

From the terms of the Spanish original that is what is to be understood.

Q. If you found a provision in a contract which referred to the delivery of, say, ten different articles, and found a provision also that the compensation to be made for the delivery of the 10 different articles was to be ascertained by reference to the cost of one article, would you consider that the cost of the other articles was not to be considered, but that you were to confine yourself to the cost of the one article, which was to be the measure of value of the whole? A. I suppose so.

Q. Would it not be clear that you would have to? A. Yes.

Q. And would it not appear to you, as a master of languages, that the mere fact that a number of articles were to be surrendered, and the price was to be fixed by reference to one article would compel you to confine yourself to that one article in ascertaining the price to be paid for the whole? A. Yes, certainly.

Q. Would not the fact that other articles were to be surrendered but were not mentioned as measures of value, and that only one article was mentioned as a measure of value of the whole, strengthen this interpretation? A. It would.

Q. Have you ever had any experience as an engineer? A. Never.

Q. You have never been connected with railway construction? A. No, sir; never.

Q. So that when a question is put to you by either the Chair or by Mr. Stine with respect to the technicalities of railway construction, you cannot answer as an expert? A. I cannot.

(781) Q. What you have given us here is an expert knowledge of the meaning of the convention as it appears in the Spanish language? A. Yes.

The CHAIRMAN: The Chair thanks Professor Amy for his testimony.

Mr. PONCE DE LEON was then called and cross examination was continued by Mr. ROBERTSON on behalf of the Government.

Q. How would you say in Spanish "The Government is to pay the cost of operating the Railway?" A. I answer as follows: "*el Gobierno pagara los gastos de explotacion de ese Ferrocarril.*"

Q. How would you say "the Government is to pay the cost of maintaining the works"? A. "*El Gobierno*

pagara el costo o los gastos de sostenimiento de las obras."

Q. How would you say "the Government is to pay the moneys expended by the Company upon works and workings constituting the road?" A. "*El Gobierno pagara las cantidades gastadas por la Compania en las obras y trabajos que forman el camino.*"

Q. How would you say in Spanish "The Government is to pay the moneys expended by the Company in the construction of the works, in the operation of the works, and in the maintainance of the works, and shall also pay the general expenditure on its offices and official force, and in the traveling expenses of its officers in their trips abroad?" A. "*El Gobierno pagara las sumas gastadas por la Compania en la construccion de las obras.*" I find no translation for the "operation of the works," because there is no sense in it.

Q. I am afraid in that case you will have to convict us all of being quite nonsensical. A. I don't understand how the works can be operated.

Q. You don't? The expression "to operate the works" is one of the most common expressions used.

(782) Mr. STINE: Not on a railway.

Mr. ROBERTSON: Most decidedly so.

The CHAIRMAN: Please translate the words as words, without referring to their application. Assume that the works can be operated.

Mr. ROBERTSON: Exactly, and without speeches, please, Mr. Ponce.

A. (Continuing translation:) "*En la explotacion de las obras*" (It is not Spanish.)

Q. What is it, then? Is it Portuguese? A. It is Spanish words without meaning.

Mr. STINE: I protest against all these debates; the witness must be allowed to—

Mr. ROBERTSON: I protest against all these non-responsive answers on the part of the witness. Now, do you mean to say that there is no phrase in the Spanish tongue which is the eqivalent of the English phrase "to operate the works?"

A. There is, but not for this particular case.

Q. Will you be kind enough to state without qualification, by answering yes or no, whether or not there is in Spanish a phrase which stands for the English phrase "to pay the expenses of the operation of the works?" A. That is not the question I was asked. In general, not. I cannot find it this moment; let me—

Q. Can you or can you not find in Spanish a phrase

equivalent to the words of the English phrase "to operate the works?" A. Yes; I can.

Q. Now, how do you say in Spanish "to operate the works?" A. That would depend. If it is of a factory, I would say "*explotar la fabrica*;" if it was a railway, I would say, "*explotar el camino*;" if it was a mine, I would say "*explotar la mina*."

Q. I am speaking of the English phrase "to operate the works." Now, to make my meaning more clear and to (783) prevent any more dodging on your part, I will put it as follows: Suppose you were to find lying on this desk a paper with the English words "to operate the works" written on it, without context, and without any explanation from any source as to what the words meant, and suppose that you were then asked to translate these words into Spanish, would you be able to do it? A. Yes.

Q. How would you do it? A. Asking first—

Q. Without asking. A. I would not translate, because I would very likely fall in error.

Q. So that, when you see the words written in English "operate the works," you don't know the Spanish equivalent for them unless you are told the kind of works to be operated? A. I don't understand it either in English. Continuing translation: "*En el sostenimiento de las obras y tambien pagara los gastos generales de la Compania en la adquisicion de la Concesion; en el mantenimiento de las oficinas y sus empleados y en los gastos de viaje de sus empleados en sus viajes al extranjero.*"

Q. How would you say in Spanish "The Government shall pay what has been expended by the Company in the construction of the road and what has been expended by it in the carrying on of the Company's enterprise?" A. "*El Gobierno pagara lo que haya sido gastado por la Compania en la construccion del camino y lo que se haya gastado en llevar a cabo la empressa de la Compania.*"

Q. How many kinds of expenses to be repaid are referred to in your last Spanish translation? A. One particular and one immensely general, because what may have been spent in carrying on the enterprise of the Company may contain an immense number of things.

Q. So that there are two kinds of expenditures to be repaid, are there? A. A great deal more than two.

Q. You say there is one particular thing to be repaid; what is the one particular thing to be repaid? A. The construction.

(784) Q. All expenditures made in the construction, that is the particulas thing? A. Yes.

Q. Now, having had read to you your last translation

into Spanish, do you not in that translation refer to two particular repayments of expenditure? A. No; not to repayment, but to two particular clases of expenditure, because in the construction expenses you find everything.

Q. Do not argue, please.

Mr STINE: Let the witness answer, I—

Mr. ROBERTSON: I want answers to my questions, not arguments.

A. I am explaining, I am not arguing.

Mr. STINE: I protest. Every time the witness starts in to give an answer he is interrupted and I ask for the protection of the chair to allow this witness to answer the questions put to him.

Mr. ROBERTSON: In that case we claim the same privilege claimed by my honorable friend at a previous session, and I withdraw the question.

Mr. STINE: I object to the withdrawal.

After discussion, Mr. Stine withdrew his objection to the withdrawal of the question "to save time."

CROSS-EXAMINATION CONTINUED BY MR. ROBERTSON:

Q. Having had read to you your last Spanish translation, do you find that the translation refers to expenditure made on construction? Please answer yes or no, or not at all A. I cannot say yes or no.

Q. How would you say "The Government will pay what has been expended by the Company in the construction of the road and what has been expended in the carry-
(785) ing on of the Company's enterprise?" A. "*El Gobierno pagara lo que haya sido gastado por la Compania en la construccion del camino y lo que se haya gastado en llevar a cabo la empresa o los planes de la Compania.*"

Q. Why do you use a different form of Spanish expression to convey the idea that the Government is to pay the expenditures made in constructing the road, from the form of expression which you use to convey the idea that the Government is to repay the expenditures of the Company in its general enterprise? A. Because they are the words used and I translate them as I find them; you gave me the words. And I say that if I made three translations of the same thing I may write them in different words; I never write in exactly the same language.

Q. Now, you have given a reason why you used different Spanish words to convey the idea of paying construction expenses from the Spanish words that you used to convey the payment of the general enterprise expenses. Have you given your best reason? A. Yes, of course, the

Spanish language is very rich and I could use any number of words to express my idea.

Q. But I have already cautioned you to give me your very best Spanish equivalent for my English, have I not? A. Yes, you have.

Q So that in the Spanish translations of which you are speaking, you gave us the results of your best efforts? A. Momentarily, yes.

Q. How do you expect the Commission to get at your best efforts if you do not give us the benefit of them here? A. That is very simple. The translations I am giving to the Commission may not be elegant, but they are as correct as possible.

Q. Now, it is true that you did use a different form of expression to convey the idea of paying enterprise expenses generally from the words which you used to express the expenditure made under construction? A. I don't know—(786) may I read it? (After reading his answer:) I did so because the words in the English language were also different.

Q. Now, when I said in English that the Government was to pay the expenditure made by the Company in construction, I said something different from what I said immediately after, that the Government should pay the general expenses of the enterprise, did I not? A. I suppose so.

Q. And it is for that reason that you, in your Spanish translation, used different words, one set of words being intended to express that the expenditure on construction should be paid for, and the other to convey the idea that general expenses should be paid for. That is true, is it not? A. Yes.

Q And that is the only reason you used two different sets of words? A. Yes, sir.

Q And because they referred to separate, distinct things? A. Yes.

Q. Now, there were two questions put in one by me, were there not? A. Yes.

Q. And for that reason—viz., because there was, first, the question of construction expenses, and then that of general expenses; is that so? A. Yes.

Q. And it was with that view, that there was such difference between the two things, that you answered as you did in your translation? A. Yes.

Q. I wish, Mr. Ponce, that you would refer to the last sentence of Article second of the Convention, and translate that sentence into English. It begins "in consideration of—" A Very well. "The Government of Colombia

shall pay to the Company a just indemnity for the works and labors that the Company may have executed in the time that the enterprise has been in its hands, and for the rolling material and other elements that it may have introduced with destination to the railroad, and which may be existing at present."

(787) Q. Now, what nouns are qualified by the phrase "which may be existing at present? A. Rolling materials and other elements introduced, etc.

Q. Why do you say that the phrase "which may be existing at present" only qualifies the rolling stock and other materials imported by the Company for the use of the Railway? A. Because, in the Spanish construction, that is easily seen; it refers to that part only, and to nothing else.

Mr. STINE: That is a grammatical reason.

Mr. ROBERTSON: Q. Appears to me dogmatical; is it not? A. Because it is a separate sentence—entirely separate.

Q. Where does the separation appear? A. In the first "*y*;" that makes it two different sentences entirely.

Q. Then, what part of speech is "*y*" as used there? A. Conjunction.

Q. Do you have in Spanish what are known as conjunctive conjunctions and disjunctive conjunctions? A. Yes.

Q. What is the function of the disjunctive conjunction? A. To separate all phrases.

Q. And the conjunctive? A. To unite all phrases.

Q. Now, what conjunctions do you use to unite all phrases in Spanish? A. "*Y*."

Q. And what disjunctive conjunction do you use to separate? A. "*O*."

Q. Which do you find used here? A. "*Y*."

Q. So that it is used to join two parts of a sentence together? A. It is to join materially, but to disjoin intellectually.

(788) Q. Almost any word will serve to join materially together, whether conjunction or any other. A. Not in Spanish.

Q. Is not the joining which is referred to in a grammatical sense a mental joining rather than a physical joining? A. Undoubtedly

Q. Now, if I say, "you and your father are both existing," I mean that they both exist? A. Yes.

Q. Then the conjunction "and" is used in the disuniting sense in that phrase? A. It is used to dis-unite

in one sense and to unite in the other, because it means two different persons.

Q. But they both exist? A. Yes.

Q. And so in that same sense the railroad and the material are two different articles, but they both exist? A. They exist, I suppose, but here it is not the same case. It rules two different sentences. "In consideration thereof the Government shall pay to the Company a just indemnity for the works and labor that the Company may have executed and so forth." Now, you can stop there if you like, but you have another sentence: * * * "and for the rolling materials and other elements which it may have introduced, etc." * * * Therefore, they are separate entirely.

The CHAIRMAN: I do not consider it worth while to take up so much of the time of the Commission to analyze the sentence. The meaning should be left to the Commission to decide.

After discussion.

Q. How would you say in Spanish: "The Government shall pay for the moneys expended in construction and shall also pay for the rolling stock which may now be in existence?" A. "*El Gobierno pagara las sumas empleadas en construccion y pagara ademas por el material rodante que al presente exista.*"

Q. Would it not be more correct in Spanish to separate the articles which were to be paid for, although (789) not in existence, from the articles which were to be paid for and which were in existence, by repeating after naming the things to be paid for, although not in existence, the words "and shall also pay," before mentioning the matters which are to be paid for and which are in existence? A. It would be more clear, it may be, but it would be less elegant and less customary. In Spanish it is usual to leave out all words which are useless.

Q. Please translate into Spanish these words: "The Government is to pay the expenditures made on the works and rolling stock still in existence?" A. "*El Gobierno pagara los gastos en las obras y el material rodante que aun existan.*"

Q. Does that Spanish imply that both the works and rolling stock are in existence? A. Yes, sir.

Q. Please look at the 5th article of the Convention; do you find a provision there requiring the Commission to examine and consider books of account? A. Yes, sir; examine "*apreciar los libros.*"

Q. Is there any place named as to where they shall examine these? A. Yes, sir; New York.

Q. Do you find any provision in that same article with respect to an inspection of the works? A. Yes.

Q. Where is that inspection to be made? A. It will inspect on the ground, the works—

Q. Does it say in Spanish the equivalent of these words: "it shall inspect on the ground?" A. Yes.

Q. Do you find in the latter part of the article the following provision: "It shall fix a reasonable period for the parties to be heard, to consider the proofs or data which they may present referring to a determination of the work done and material mentioned, in order to appraise the same?" A. I find some of these words, but not the whole.

Q. Take beginning, then, with these words, "it shall fix;" please translate the following matter into English. A. This translation, *viva voce*, is not a translation at all: I am not answerable for that kind of translation; any little (790) word may change the meaning. If you want a correct translation, I have to sit down with a pen.

The CHAIRMAN: Give us the best you can.

Mr. ROBERTSON: Q. I want you to give us your best English. A. "It shall fix a roasonable time for hearing the parties, attending to the allegations made by them—"

Q. Does that mean consider the proofs? A. No (Continuing translation); "and all the proofs or data that they may present relative to the aforesaid work, labor and materials, to the appraisement of them, and to a determination of the total indemnities, and shall also fix proceedings that it must follow in the exercise of the faculties granted to it (the Commission) in relation to its proper acts, as well as in relation to the acts of the parties."

Q. Now, what Spanish words do you find in that part of the article referring to what stands for our English words, "to the determination of the proper indemnity?" A. "*A la fijacion de la indemnizacion consiguiente.*"

Q. What Spanish word do you translate into the English word "proper?" A. "*Consiguiente.*"

Q. Does not that Spanish word also mean "consequent" or "corresponding?" A. Yes; it means "corresponding," "proper," etc.

Q. If you were to use the English words, "corresponding indemnity," would not that make the indemnity correspond to the works, labor and materials mentioned in the foregoing part of the article? A. Yes.

Q. And by saying "proper indemnity," you mean the indemnity which would follow properly the requirement that the Commission should ascertain and allow what had

been expended on the works, labor and materials? A. I do not understand the question; kindly make the question more simple.

Q. Very well; you have translated the Spanish words (791) to mean "proper indemnity;" now the "proper indemnity" mentioned in that Spanish sentence is, is it not, the indemnity which shall correspond to the expenditure on the works, labor and materials mentioned in the same article? A. Yes.

ROBERTSON: That is all.

RE-DIRECT EXAMINATION TAKEN UP BY MR. STINE FOR THE COMPANY:

Q. In Article two, beginning with the words in the last sentence, which you have translated, the Government has given the following translation: "In consideration therefor, the Government of Colombia is to pay to the Company a just indemnity for work of every kind completed by the Company during the time the railway has been in its charge." Does that say in the original contract "enterprise" where the word in the translation says "railway"? Does it say "railway" or "*empresa*"? A. "*Empresa*."

Q. What is the translation of the word "*Empresa*"? A. "Enterprise" or "undertaking."

Q Then the translation of this word by "railway" is a gross mistranslation? A. It is an error, not exactly a gross mistranslation; you can translate it "enterprise" or "undertaking," or even "Company," but hardly "railway."

Q. Then the word "*empresa*" should be properly translated as "enterprise" or "undertaking"? Now it says: "Just indemnity for the work of every kind done by the Company." Is that a correct translation? A. No, sir; it says: "A just indemnity to the Company for the work that the Company may have executed during the time in which the enterprise has been in its charge."

Q. Now, in your opinion, can that sentence be construed to mean only construction? A. "*Obras y trabajos*" has a more extensive meaning than "construction."

(792) Q. The word "construction" is not used in any way in that sentence? A. No; not in that sentence.

Q. Therefore, this part of Article 2nd, which has expressed what the Government is to do in consideration of the transfer by the Company to the Government of what it owned, or what it had at that time, in no way refers to construction? A. No.

Q. And it does not use the word "railway," but used the word "*empresa*"? A. Yes.

Q. Then it should read: "In consideration therefor, the Government of Colombia is to pay the Company a just indemnity for the works and labor of every kind done by the Company during the time the enterprise has been in its charge, and for such rolling stock and other things imported by the Company for the use on the railway, and which are now in existence." Is that, in your opinion, a correct translation? A. Yes.

Q. Now, will you please state whether or not the word "*trabajo*," meaning "work," of every kind executed or done, as you said, which my friend credited to works and labor, the English word "work" would not be an equivalent? A. It would.

Q. Therefore, this translation which the Government has made, in so far as the word work is concerned, meaning thereby a generic term, and embracing every kind of work done, is correct? A. It is correct.

Q. Then, although it is not exact, word for word, it is a substantially correct translation as I have just read it to you? A. Yes.

Q. Now, will you please state your reasons and explain fully why you have testified that the clause "and which are now in existence" refers to the rolling stock and other things imported by the Company for use on the railroad? A. Because it is another sentence entirely, and because it shows by the last "*y*" it refers to this single sentence, "*y demas elementos.*"

Q. Now, Mr. Ponce, in your opinion, is there anything in this sentence, which I have read to you, and which you have corrected as you think it should be corrected, which (793) embraces the payment of an indemnity for the work of every kind done during the time the enterprise has been in its charge, which limits it to the local work done on the railway, or does it mean every legitimate expense incurred in the enterprise, so far as work of every kind done is concerned? A. In my opinion, it means every kind of legitimate expense made in the enterprise and by the Company.

Q. Is there a clause in Spanish intended to express the same meaning as is expressed by the words "the cost of construction," which is translated in Spanish "*los gastos de la construccion?* A. Yes; there is.

Q. Now, if a person, skilled in drawing legal documents and expressing himself clearly, had intended to limit the scope of an indemnity to the repayment of the cost of construction alone, would he have used such words as "*los gastos de la construccion* ?" A. That would depend;

I don't know; it would depend upon what that person understood by "*los gastos de la construccion.*"

Q. What do you understand by it? A. The work on which any manual labor, intellectual labor or effort is required; I understand everything that is done for the purpose of arriving at some end.

Q. Among engineers, there are what is known as "construction" on one hand, and "maintenance and operation" on the other. The Government has attempted to limit the purview of this contract so as to give it the narrow construction which means the repayment to the promoters of the amount of cash that was put on the labor and building of the road and to the engineers who were in charge of the construction, with those laborers building the road, and to the cost of the materials which went into it, and nothing else. In your opinion, is that narrow construction of the meaning of this contract justified by the language used in the contract? A. No, sir.

Q. Now, in the last question, which you have answered "No," would you please state how you would express (794) the idea in Spanish whereby you limited the indemnity to the payment of the mere cost of construction, as I have just expressed it; that is, to say only the labor and the material and engineers who were on construction and on surveys, and nothing else? A. I would drop about three articles of this convention. I would put in its place, the Government of Colombia will pay to the Company in exchange for all these privileges turned over to it the appraised value of all the works done by the Company, and its rolling materials and other things that may have been imported for the railroad.

Q. But you would put nothing in it about indemnifying the Company for the work done by it while the enterprise was in its charge? A. I would not; in case I wanted to limit it, there be no use in putting it in.

Q. Furthermore, suppose that a part of the railroad had been handed over to you as the Company, and you had constructed a certain portion of that road—say from Cordova to San Jose—if you desire to limit the recovery only to the bare cost of construction, in the sense in which we spoke just now, would you not say: "I will pay to them only the cost of the construction of the roadbed and structures and the rolling stock from Cordova to San Jose. A. It would be natural to do so; I would.

Q. If you intended that the repayment should not refer to all the work done while the enterprise was in the hands of the Company, you would limit it to the particular

section, and nothing else; would you not? A. I would, if I did it properly.

Q. Now, furthermore, if certain discussions had taken place between the representatives of the Government and the representatives of the Company, and the representatives of the Company had suggested that a Commission composed of engineers should be appointed, who were to appraise the value of the construction, and that the proposition had been rejected on the ground that the Company desired to be reimbursed for whatever it had spent; if subsequent to this pro-
(795) ceeding, a Convention was agreed to which stated in definite terms that the Company was to be indemnified for the work done by it during the time that the enterprise was in its hands, would not that be additional proof to your mind that it was intended that all legitimate expenses which had been incurred in the enterprise should be repaid to the Company? A. That is what I understand, not only on account of what I have just read, but from what I saw in the other agreement—the Basis.

Q. You mean read in conjunction with this convention? A. Yes.

Q. Now, Mr. Ponce, you have heard the Government's witnesses, or some of them, endeavoring to limit the meaning of this clause, and other clauses of a general similar scope, to the expenses incurred in reference to and upon the railway locally only; have you not? A. I have heard some of them; I have not heard well, because I was sitting some ways away, and could not hear.

Q. Very well. Now, can you find any phrase or clause in the entire contract which by fair interpretation, either by reference or by express language, can limit the meaning in that way? A. No, sir.

Q. Would it be necessary and usual to express any contract by a series of specific provisions, everything that the Government might contemplate a repayment for, or might it be summed up in one general comprehensive clause, such as would be expressed by the phrase, "*obras y trabajos*" in conjunction with the word *costear*?" A. There is no necessity for specifying every point; the phrase "*obras y trabajos*" is extensive and general.

Q. And, therefore, the statement that they would pay for the "*obras y trabajos*," would cover, in your opinion, every kind of legitimate expenses incurred by the Company, would it not? A. Yes.

Q. Would you regard the traveling expenses of the officers of the Company, while on business for the Com-
(796) pany, as a legitimate part of the indemnity to be paid to the Company? A. Yes, I would.

Q. Would you regard the original expenses of securing the concession from the Government, or its original owner, by the Company as a legitimate part of the expenses? A. Yes.

Q. Might it not be likened very much to the charges for a plot of ground on which a house was to be erected; would not the right to run a line over a certain road be likened to the right to build a house on a plot of ground; would you not have to buy the ground first, and consequently, if you were going to indemnify a person, or the Company which originally possessed the concession for the legitimate expenses which it had incurred, would not the payment for the concession, in your opinion, be part of the reimbursement? A. Undoubtedly.

Q. Would not the legitimate expenses incurred in erecting a building be part of the indemnification? A. I believe they would.

Q. Suppose that the Company were trying, in its efforts to build this railroad, to sell its securities, as is usually done in enterprises of this kind, and suppose that it was compelled to sell its bonds at a discount; that is, say, $1,000 for $950; would that discount, in your opinion, be part of the indemnification which the Company should receive, provided the Company were under the obligation to repay these bonds at par? A. Yes, sir.

Q. You would consider that a part of the legitimate expenses necessary for the successful carrying on of the enterprise? A. Yes.

Q. It has been testified to here that a person who undertakes to do a work is supposed to have the money with which to do it. Now, from your experience, or your knowledge (of course, I do not suppose that you have had a very great experience in that), do you not think that all great enterprises, canals, railroads, bridges, etc., is it not customary to invite a good many persons to join in these enterprises, so as to diminish the risk to the individual, and (797) at the same time make it possible to secure a large amount of money, obtained from many sources, with which to carry on the work? A. Yes, that is so. I have had a great deal of experience in those things.

Q. You issue obligations of some kind or other to raise money? A. Yes.

Q. And so far as you know, is that not done in nearly all parts of the world? A. Yes.

Q. Mr. Ponce, you say it is the universal custom, is it not? A. I will say I have been mixed up in many enterprises in many countries; some here and some in my own country, and in every one of them the money was

raised in that way. No man goes into a large enterprise alone.

Q. Do you know that Mr. Cisneros, when he undertook to build the Cauca Railway, took the money out of his own pocket? A. No; I know he did not.

Mr. STINE: That is all.

Mr. ROBERTSON: Q. You have read this Convention very carefully, have you not? A. Yes.

Q. It was submitted to you by Mr. Stine, or Mr. Schramme, some time ago? A. Yes.

Q. How long? A. Maybe a month ago; I know I have not read it for a long time.

Q. He has consulted you? A. Yes.

Q. Discussed it very often with you? A. Often? No.

Q. About how often? A. I should say perhaps three times.

Q. But so lengthily that you understand thoroughly what are his views? A. I do not entirely understand his views. I have accepted his statement, and his views are true.

Q. You say you have accepted his information as true? (798) A. I mean I have accepted what I have read here (the original Convention).

Q. You have read this Convention so carefully and have discussed it at such length with Mr. Schramme that you understand its full force and effect as an instrument, do you not? A. I suppose so.

Q. Do you understand Mr. Schramme's views of the instrument? A. I suppose so.

Q. And he understands yours? A. That is a question in his own mind.

Q. You have known Mr. Schramme for how many years? A. I think more than 10.

Q. Have you had business with him? A. No.

Q. Very little? A. None of any kind.

Q. Have you ever been retained by him? A. For translations of Spanish and drawing up powers of attorney.

Q. Frequently? A. Not very.

Q. You have had discussions with him as to the meaning of Spanish documents? A. Never had any discussion.

Q. But you understand fully the force and effect of the different provisions of this Convention, do you not? A. I suppose I do.

Q. And as you sit here now, with that Convention in your hand, you have a fair general knowledge of the scope

of the Convention? A. Of the purpose of the Convention, yes.

Q. Now, you find in various of the articles of the Convention the words "*obras y trabajos*"? A. I do.

Q. And I think you testified in answer to Mr. Stine that you found these words used in the same sense throughout the Convention? A. No, sir—that is, I do not understand the question; I do not know whether Mr. Robertson means that the two words are synonymous, or that the phrase is used with the same meaning throughout the Convention.

(799) Q. Do you find the words "*obras y trabajos*" in Art. 2 of the Convention? A. Yes.

Q. Please give the text; I mean in the first part of the article? A. I find the word "*obras*" alone.

Q. Is that used to signify works in a substantive sense? A. I do not know.

Q. Where do you find the word "*obras*" next in the same article? A. Some lines below, where it says "*obras*" and "*trabajos*" together.

Q. Now, is the word "*obras*" in that connection used in the same sense in which it is used in the first instance in that article? A. It does not look like it.

Q. Do you know or do you not know? A. I cannot know the intention of the persons who wrote that.

Q. Now, do you find in the original Convention the Spanish equivalent for the expression "in consideration therefor"? A. The expression can be admitted; it says "in exchange for."

Q. And in a legal document, if you were putting "in consideration of," you might use the same Spanish words? A. It would be understood.

Q. It would be understood that you meant "in consideration therefor"? A. Yes.

Q. You prefer, however, in English to use the words "in exchange therefor" as equivalent for the phrase in that article? A. I would prefer the phrase "on its part," but I find very well the phrase "in consideration therefor."

Q. But you do not know whether the persons who drafted this document had the same nice sense of the use of words that you claim to have? A. I do not know.

Q. Do you claim to have a better knowledge of the Spanish language than Mr. Menocal? A. Yes; I think I do; I respect Mr. Menocal very much as to his knowledge (800) of other things, but on Spanish I flatter myself that I know more than he does.

Q. Do you consider that you have a better and nicer

knowledge of the Spanish language than Mr. Amy? A. No, sir.

Q. How does he stand? A. I consider him a man who has made a special study of the Spanish language, and he stands very high in that respect.

Q. Do you consider yourself in the same light? A. No.

Q. Do you consider yourself a good lawyer? A. No; neither do I consider myself goood-looking or young.

Q. Joking aside, you consider yourself a good lawyer; do you consider that you are as accomplished as Mr. Amy in your understanding of the two languages, Spanish and English? A. I have never made the comparison.

Q. You would put your opinion against the opinion of Mr. Amy as to the meaning of Spanish words? A. And against the opinion of any man in the world.

Q. Assuming, then, that the English words "in consideration therefor" may be used in the 2nd Article of the Convention, will you be good enough to state to what matter or matters the word "therefor" relates? A. The word "therefor" is not here.

Q. I know that; what I say is, assuming that the Spanish words can be translated "in consideration therefor," to what matters would the word "therefor" relate? Would not the matters referred to be the works and materials before mentioned in the same article? A. They will refer to the following works; the Cauca railroad and all its fixed and rolling materials in existence, works, buildings, tools, utensils of every kind, accessories, etc.

Q. And it is for these things the Government is to pay the consideration? A. Yes.

Q. And they are to be delivered by the Company to (801) the Government within fifteen days after the approval of the contract? A. Yes.

Q. You find that provision in the Convention? A. Yes.

Q. Now, will you tell me how the Company is going to deliver the travels of the officers, and the expenses of the officers in going to offer bonds, and is to deliver the office occupation, for which rent had been paid; is there any provision for the delivery of such things as these? A. Yes, it appears under the word "works."

Q. Do you think the Company is bound to deliver these things to the Government? A. No, sir.

Q. Is it bound to deliver any bonds? A. I do not know; I have not examined the accounts of the Company.

Q. I am speaking of the provisions of the contract; under the Convention, is the Company bound to deliver

any bonds to the Government? A. I do not know, I could not answer that.

Q. You have testified that you well understood the provisions of the Convention? A. I do.

Q. Does the Convention provide for the surrender of their offices or the bonds to the Government? A. I have not so understood.

Q. Is there any provision in the Convention that the books, upon which the bookkeepers of the Company had worked, shall be delivered to the Government? A. I have not seen it.

Q. Is there any provision in the Convention that the earnings of the Company, which have resulted from the operation of the road, shall be delivered to the Government? A. I have not found it.

Q. Is there any express reference made to the repayment of sums expended for office rent? A. I believe, yes.

Q. You think that the word office is specified? A. Yes.

Q. You think that it is specified? A. Not expressly.

Q. Well, I ask you for any express reference? A. There is no express reference.

Q. Any express reference to official salaries? A. No. (802) Q. Is there any express reference to traveling expenses? A. No express reference.

Q. Is there any express reference to the money expended in the efforts to sell bonds? A. There is no express reference.

Q. Now, you have testified in your re-direct that the word "completed," as quoted by Mr. Stine to you from the Government's translation of the convention, is not justified? A. I do not remember; I do not know, that is an hour ago.

Q. Now, in this translation of the 2nd article of the Convention, I find the words "a just indemnity for the work of every kind completed by the Company;" you were asked on your re-direct whether the use of the word "completed" was justified, and you testified it was not justified? A. I do not remember.

Q. What Spanish word do you find standing in the place occupied by the English word "completed?" A. None; it says here "for the works and labor the Company may have done or executed."

Q, What Spanish word do you find for what you designate ss "executed?" A. "*Ejecutado.*"

Q. Is that used in the singular or the plural? A. Singular.

Q. Does not "*ejecutado*" mean "completed?" A. Sometimes; it means also "hung" or "shot."

Q. Well, when a man is hung or shot, is he not finished? A. Yes.

Q. There is an end of him? A. Yes.

Q. There is an end of him in the same sense as the "*obra*" when complete is the end of the work; you finish it—the job? A. Sometimes.

Q. So that it does stand for "completed" sometimes? A. Yes, but not here.

Q. You do not think that Mr. Schramme thinks it means "completed" here? A. I do not know Mr. Schramme's opinion; he knows mine.

Q. You do not mean to say that it can mean never (803) executed or completed or fully finished, but that merely in this instance you do not think that it does? A. That is what I expressed.

Q. Why do you not think that it has this particular meaning here? A. Because I understand it so; because, by the sense of it, it does not apply to anything finished.

Q. But what do you see there that makes you form this opinion? A. The reading of the Spanish of it.

Q. Point me out one thing? A. Every word has a sense, and the sense is what I mentioned.

Q. Do you not understand that the word "*ejecutado*" in that connection means or refers to physical work, and to mental works necessary to do the physical work, that has been performed in connection with the construction of the road? A. I will not answer that question.

Mr. ROBERTSON: That is all, thank you.

The Commission agreed to stand adjourned until Thursday morning the 26th inst. at 11 o'clock.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary

Twenty-Sixth Session.

(804) Held at No. 30 Broad street, New York, on Thursday, August 26, 1897, at 11 A. M.

Mr. C. F. Adams called and sworn on behalf of the Government—Mr. Paul Fuller called and sworn on behalf of the Government—Cross examination of Mr. Fuller by the Company—Re-direct examination by the Government—Re-cross examination by the Company—Prof. Amy recalled.

Present: Commission, Attorneys and Counsel as before.

The Chairman called the meeting to order at 11:25.

Mr. ROBERTSON: I will now call Mr. Adams.

Mr. ADAMS was called to the witness stand, and the usual oath of affirmation was administered by the Chairman.

EXAMINATION TAKEN UP BY MR. ROBERTSON:

Q. Kindly state your full name? A. Charles Frederick Adams.

Q. Your age and profession? A. 46; lawyer.

Q. How long have you been a member of the bar? A. Since '72, I am sorry to say.

Q. Where did you acquire your profession, Mr. Adams? A. In the office of Evarts, Choate & Beeman, and afterwards in the Harvard Law School, where I graduated.

Q. And with whom are you associated in the practice of the law now? A. Coudert Brothers; for many years (805) prior to the past five years I was employed on counsel work in Washington.

Q. And what were your professional relations in Washington? A. I was a member of the Law Board of the Interior Department; that was my official place there. It was on an advisory board to the Secretary, and part of the time I was detailed, at the request of Mr. Blaine, to be editor of the debates on the Spanish-American conference, called the Pan-American conference.

Q. Have you examined concessions from Spanish-speaking countries for the construction of railroads or other public works? A. I have had a good many of them, mostly in connection with Mr. Coudert's business, on which I have been employed, as being familiar with the Spanish language, and, to some extent, a student of South American law—I claim no expertness in that connection, however. In connection with his business I have had occasion

to examine such documents, and I have also had occasion independently to examine and advise about documents in the Spanish language; and I remember at one time Mr. Charles Nordhof sent me some notes in Spanish for examination, and about which I was consulted.

Q. You say you do not claim to be an expert; what do you mean, an expert in reference to South American law? A. Yes; I do not qualify as a South American lawyer; I am not thoroughly informed in their law.

Q. Have you had experience in connection with Boards of Arbitration in difficulties between the United States and foreign governments, or the citizens of foreign governments and the United States? A. In Washington I assisted, on several occasions, Dr. Jose Maria Rodriguez, who has an extensive practice of that kind, and also Mr. Kennedy, and in New York I have also had participation in such matters.

Q. Please mention some arbitration matters in which you have been connected? A. I had charge, very largely, (806) of the Cerruti claim against the Government of Colombia. And while in Washington, I had to examine papers and more or less express opinions on points in doubt in connection with claims against Venezuela on some seizures of steamboats belonging to American citizens in some of the civil wars there.

Q. Professionally, have you ever had to investigate the question of the character of the jurisdiction of tribunals of arbitration; that is to say, whether they are bodies of a limited jurisdiction, or bodies having general equitable powers?

Mr. STINE: One moment, before you answer that; I fail to see the bearing of that question, or the object of it.

Mr. ROBERTSON: It is on the scope of the Convention—on the scope of this particular Convention.

A. I have had occasion, I think, twice; I know once I made a personal brief on the question; the matter, I may say, arose very prominently in that Cerruti arbitration before President Cleveland, and I got very decided impressions upon the question as to what is the rule for the construction of such matters.

Q. Kindly state that rule? A. I conceive that the definition of the scope of the jurisdiction in each case must depend upon the construction of the instrument which creates the Commission and authorizes its action; very frequently it is a formal treaty between nations. It may, of course, take any shape which is expressed as satisfactory by the parties interested, but always, of course, in written form, and the document which creates the Commission

necessarily uses language the construction of which must, I think, necessarily define the scope of the jurisdiction of the Commission. Of course that construction, as in all other cases of construction, may be differed in by different minds, but, then, that is the task to be accomplished. That the construction of the language creating the Commission (807) governs its actions, I think there is no doubt about, because there is nothing of what we call common-law jurisdiction in such matters. The terms in which nations and individuals voluntarily submit the arbitration of matters must, of course, show to what extent they are submitted, and in what form they are submitted.

Q. Is there any power not given to the Commission by the instrument creating it to be imputed to the tribunal? A. My impression is that no substantative power is given except as expressly defined in the instrument. A mere detail which is covered by the power which is granted I suppose would, in one sense, be said to be imputed, but it must necessarily be a part of what is expressly granted, and incident to that—a thing without which that which is expressly granted could not be carried out.

Q. For instance, would such a Commission be vested with what are termed equity powers? A. My impression is it would not, unless expressly granted to it. My reason for saying that is that I remember in a number of Conventions which I remember having seen, when it was desired that such equity power should vest in the Commission, there was an express grant of such power in the document; take that Cerruti matter—President Cleveland was given the widest scope by the express wording of the document appointing him; he was, in so many words, authorized to do what, in his judgment, he should consider necessary to justice in the matter and the particularity with which that kind of power is given in cases where the giving of it shows that it is intended to be given leads me to think that any nation may, without disgrace, retire from any arbitration in which the jurisdiction has gone beyond what is expressly given in a Convention.

Q. Now, I show you what we call the Convention of the fourth of January, 1897, the agreement entered into between the Government and the Cauca Company, providing for the creation of this arbitration; please look at this instrument, and state whether you find any equity powers (808) granted to the tribunal thereby appointed. A. WITNESS (reading Convention): I am reading it all through because I have not before read the original; I take it that this Article 5 is the one that defines the jurisdiction.

The CHAIRMAN: Q. Article 5 defines the duties of the Commission? A. Yes.

WITNESS: Well, as I read it, Article 5 seems to be the one which defines the jurisdiction. It appears by the same that it was appointed so that "it shall fix or determine the indemnity of which mention has been made"—it shall, for this purpose, appraise the works, labors and materials alluded to—"*tasar*" is the verb there; that means to appraise—"*tasar y para fijar asi*"—for this purpose; and in order thus to fix the indemnity to be paid, in the corresponding indemnity, the Commission, it shall be the duty of the Commission—"*debera examinar*"—to examine and appraise the facts or items shown in the books and accounts of the Cauca Company in New York, the documents which the Government of Colombia and the Company may present in support of their respective rights, and those which the Commission may demand; there is a grant of power to demand what documents it may think necessary to elucidate the question before them; it is to examine the books and documents, and to demand such others which may not be offered to it as it thinks necessary; "*inspecionara*" it shall inspect on the ground the works, and so on to the end, with a view to the making of comparisons, and the verifications necessary for the determination of the facts which are to serve as the basis for the fixing of the indemnity.

The CHAIRMAN: Q. The chair would like to ask you in relation to the equity powers especially. A. I thought I would go through it, so as not to give you a brutal judg-
(809) ment, as it were (reading from Convention): they having the authority for that purpose to examine witnesses and appoint experts; then, it shall announce, or decide on, a proper period of time, a reasonable period of time in which to hear the parties, pass on the allegations of the parties and the proofs or data which they may present concerning, or bearing upon, the appraisal of the works, labors and materials already named, to the appraisal of that, and the fixing of the indemnity corresponding thereto, and it shall prescribe the procedure, as we would say, the rules by which the parties are to be governed in presenting the matters and so on, and it shall fix the procedure to be followed in the discharge of its authority or of its functions, as much as of its own official acts as of the appearance before it of the parties; so that I find here the principal things to be considered are the appraisement, and the indemnity for that which is appraised; and power is given to inspect the books and documents which shall be presented, or such as it may demand, and to inspect on the ground the mat-

ters there for the purpose of verifying the data, and to fix the period during which, a reasonable time during which the parties are to be heard, and the Commission is to consider their allegations and the proofs which they may present; and they are to fix the procedure—prescribe the procedure—map out the proceedings before the Commission, or in the Commission, as much in relation to its own official acts as in relation to the acts of the parties; procedure would cover both, for instance, as to how often they should sit, how many counsel they would hear, what the burden of proof would be, what the course of evidence would be—

Mr. ROBERTSON: Q. But the provision giving authority to prescribe the course of procedure would not enlarge the jurisdiction of the Commission with respect to the sub-
(810) ject to be passed on? A. I do not see how it could; the function to be performed is the appraisal; incidental to that they are to find out what is to be appraised and then the value of it—

Q. Now, that brings us to another main point in the case; that is, what is to be appraised by the Commission? A. They are to "appraise the works, labors, labors and materials above referred to."

Q. Now, what are the works, labors, and materials above referred to? A. Let me see Article—"In consideration thereof the Government of Colombia will pay to the Company a just indemnity for the works and labors of the Company, which the Company shall have executed during the period in which the enterprise has been under its charge, and for the materials, rolling stock and other elements which it shall have imported for use in the railway, and which shall be in actual existence.

Q. Now, then, what are things upon which these primary duties, to inspect and to appraise, must be exercised? A. There seem to be three words there: "*obras, trabajos, material rodante, demas elementos*;" "*obras*"—that is, works; it is commonly used in connection with "*trabajos*," which in one sense is also works; more accurately, the labors. I take the distinction to be that "*obras*" represents the concrete results of what has been done, or of something that has been done, whereas "*trabajos*," I should, for that reason, translate as the primary or necessary work done in attaining that result, but which in itself does not have a separate concrete result. It merely tends to the concrete result included in "*obras*," as when a building is put up a number of things are to be done long before the materials are required to build the walls, put on the roofs and so forth; for instance, the deciding on the plan of the building, deciding on the site for

the building, consulting and getting the services of a proper architect as to the exact work to be done and the probable cost of it; all that is an element in the doing of the (811) material work, but which does not remain in concrete material shape in the work.

By the CHAIRMAN: Q. In that you would include the builder's profit, I suppose? A. Whatever a person authorizes to be done, he has to pay for, but as to the pay for that sort of work: suppose I have a contract as a lawyer, I have been retained by a written agreement to do certain work; for instance, to search titles to land in Kentucky, to search titles and organize a land company; under those circumstances, it would be understood that the expenses involved in any work connected therewith would go in; but the expenses of my educating myself as a lawyer certainly would not, so that I think the proper definition of "*trabajos*" as distinguished from "*obras*" would be this, that it would cover anything conducive to the doing of the work which the Government would have to pay for, if those parties did not.

By Mr. ROBERTSON: Q. Would that include as a part of the cost of constructing the railroad the salaries of the Company officers not directly engaged in the construction work, or the salaries of the employees in the offices of the Company not directly engaged in the work of construction? A. I do not see how it could any more than, if a single individual were doing the work, that he could charge for his time in entering up, for his own purposes, his accounts and charge his board, and what not; now, take this distinction; suppose, in this case, that the Government itself did the work, it would not have to pay salaries to the officers of any Company; it would have to pay for the surveying, for the getting of such estimates as were necessary to the doing of the thing; it would have to pay all the technical people employed, the laborers employed on the work, the "*trabajos*;" that word, I think, in engineering matters is intended to cover the necessary preparation for the (812) producing of the concrete results. Suppose that this concession had been assigned to a man in Siberia. I do not think it would properly cover his expenses of going from Siberia to Colombia; if, on the other hand, the contract had been originally made with a man living in Siberia, knowing that he was there, it would appear to me that if it was intended that such should be made part of the expense of doing the work, knowing that he was so situated that he could not begin to do the work unless he made certain preliminary expenditures, it would be inserted in the contract.

Q. Do you find anything here in this convention which aunthorizes the Commission to appraise, or to allow indemnity for anything that is not of a concrete nature, except the labor that is incident and directly necessary to the creation of the concrete results, concrete entities, specified in the Convention itself? A. I will answer that as in my opinion expressed above, which is very strong in my mind, that it is only that which any one would have to pay for which they would pay.

Q. Suppose that this road were to be built by a corporation, would you say that this Convention provided for the payment of the salaries of the officers of the Corporation, that they should go into the the construction of the road? A. I do not see how it could include that—

Q. Do you find it provided in the Convention that those salaries are to be allowed? A. No, because the provisions are those which we have been analyzing; to my mind, they do not cover that.

Q. Judging from that paper, you say that no power is given to the Commission to include those? A. Not to my mind.

Q. Suppose that during the work of the construction of the road, disputes arose between the Government and the Company with respect to the rapidity or slowness with which the road was being constructed, and suppose the Government took the ground that the Company was not (813) performing the work within the time and in the manner provided for in the concession, and declared its intention to forfeit the entire concession and take possession of what work the Company had done; now, suppose that under these circumstances certain officers of the Company visited Bogota, the seat of the Government, for the purpose of placating the Government and inducing it to withhold the threatened forfeiture; would you consider that there was anything in this Convention which would authorize this Commission to charge against the Government the compensation of those officers and their traveling expenses, and allow it as part of the indemnity provided for in this paper? A. Their expenses in going there, and being there?

Q. Yes, and for their loss of time while there? A. I do not see how that is an element of the works, of the "*obras y trabajos*," of the "*materiales*." I cannot see how that could possibly be covered by this Convention.

Q. Now, do you see any authority given to the Commission to go over the books and accounts of the Company generally, and to ascertain what expenditures the Company has made, generally, irrespective of their direct con-

nection with construction of the railroad, and to allow those general expenses, in order that the Company may come out of the enterprise with no loss to itself; is there any such power granted to the Commission? A. The reference to the books and documents that I see here is "*Para esto*," and so on—the authority to examine the books and documents is expressly for this purpose; "and in order to fix in this manner the corresponding indemnity;" and just before that it says, for the appraisal of the works, "*trabajos*" and "*materiales*."

Q. And you do not find any power given in the Convention by which the Commission is authorized to balance the accounts of the Compahy, if we may use that expression, and make the Company such an allowance as will permit it to retire from its enterprise without loss? A. I do (814) not think the question of profit or loss is to be in any way considered; the values of certain things are to be ascertained; certain things are to be appraised—

Q. And the amount of that appraisal is to constitute the amount of the indemnity? A. The Commission is required to get the data for that appraisal and to appraise the "*obras*," "*trabajos*" and "*materiales*."

Q. And you say, then, do you, that all the "*obras*," "*trabajos*" and "*materiales*" must have relation directly to the construction of the road or its equipment? A. I judge so; that part where they are first mentioned there, to which this refers back—

Q. I ask you now another question; that is, as to the duty of the Commission with respect to visiting the "*locus in quo*," to inspect the road? A. The language I find here is after the clause which says that they shall—it shall examine the books and documents, and so on; it goes on to say: "it shall inspect upon the ground the works and labors of the *ferro-carril* and the rolling stock, in order to make the comparisons, the actual verification of the data, by an inspection of the facts, whatever it may be—confront the allegations with the facts—necessary for a determination of the facts which are to serve as the basis for the fixing of the indemnity.

Q. Do you find that that provision is permissive or is it mandatory? A. It is mandatory in the imperative sense: "it shall inspect on the ground the works," and so on, and the rolling stock, in order to make the necessary confrontations and verifications for the determination, etc. My impression is that it was intended by the draughtsman of that paper that that was the proper way before the Commission could get through, and that in connection with the definition of the materials where the first reference is made

to what is to be appraised—the materials which shall be actually in existence.

Q. What is to be turned over, then; is not the railroad to be turned over with the materials? A. All its fixed (815) and rolling stock in existence.

Q. Then the railroad must be in existence, as well as the materials? A. Of course.

Q. That appears to make it necessary that the things to be appraised and indemnified for should be things that the Government gets? A. Yes.

Q. In other words, the Government prefers to pay a proper price rather than confiscate? A. Yes.

Mr Robertson here asked that the examination of Mr. Adams be suspended for the purpose of calling Mr. Fuller, and the request was granted by the Chairman, Mr. Stine assenting.

Mr. Paul Fuller was called on behalf of the Government, and the usual oath of affirmation was administered by the Chairman.

Examined by Mr. Robertson:

Q. You are a member of the bar in this city? A. Yes.

Q. How long have you been a member of the bar? A. About 29 years.

Q. And with whom have you been connected during that time? A. Coudert Brothers, during most of the time, except when I was practicing alone.

Q. Will you state whether or not your firm has been Counsel for Spanish speaking or other Governments during the time you have been connected with it? A. Yes, at various times.

Q. Kindly state the Governments? A. We have done business for the Spanish Government at times, and I do not remember whether we did any business directly for any of the South American Governments, but we have had business in connection with them, either for or against them.

Q. Have you ever had any business for or against the Colombian Government? A. Yes; we represented the claimant in the case of the Government of Italy against the (816) Colombian Government, the Cerruti matter, so called, recently decided.

Q. You are not familiar with the Spanish language, are you not? A. Yes.

Q. And for how loug have you been familiar with that language? A. Since my childhood.

Q. You are familiar, I assume, with questions relating

to the extent of the jurisdiction of tribunals of arbitration —that is, as to whether such tribunals are courts of limited powers, or whether they have general equitable powers? A. I have an opinion

Q. Will you kindly give the Commission the benefit of your opinion on that subject? A. It is that as such a Commission exists only by virtue of the Convention which brings it into being, their jurisdiction is necessarily limited by the terms of that Convention.

Q. Now, will you kindly look at this Convention of the 4th of January, 1897; I will ask you to read the 2nd, 3rd, 4th and 5th clauses; those are the clauses?

(WITNESS, after reading:) I have read them.

Q. Now, from the reading of the Convention, will you kindly give to the Commission the benefit of your views as to the scope of the Commission's power, and the limitations to which the Commissioh is confined in the matter of ascertaining the indemnity to be allowed under the Convention? A. I find that by Article 2 the Government of Colombia is to pay to the Company a just indemnity for the constructions and works that the Company may have executed during the time in which the enterprise was in its charge, and for the rolling stock and other materials which they have introduced into the country for use on the railway, and which still exist. I find, further, by Article 3, that the Government of Colombia and the Company recognize beforehand as a sole and just indemnity a sum equivalent to what the Company can prove to have spent —"*costear*"—in the works and constructions executed by (817) the Company in the construction of the said railway and for the materials, rolling materrials, etc., etc., introduced for th esaid railway. By the 4th Article I find that, in order to fix this indemnity of which the two previous articles treat, the Government of Colombia and the Company shall constitute a Commission (this Commission, I presume), and by Article 5, which seems to be the Article giving the scope of the powers and the duties of the Commission, it is provided that the Commission to be constituted as above referred to for the purpose of fixing the indemnity already alluded to shall, for this purpose, appraise the constructions—I translate the word here by "constructions"—work and materials hereinbeiore referred to; for that purpose and in order to so fix the consequent indemnity, the Commission shall examine or weigh—appraise is the exact word here—the books of the Cauca Company in New York, any documents which the Government of Colombia or the Company may present in support of their respective rights, and any further documents which this Commission may

call for. It shall inspect, upon the grounds, the constructions and works of the railroad and the rolling materials, to the end that they may compare and make the necessary comparisons and verifications in order to determine the facts which must serve as the basis of the fixing of the indemnity, and they may, for this purpose, examine witnesses and appoint experts. They shall also fix a reasonable time in which the parties may be heard, and the allegations and proofs weighed, or the facts presented in reference to a determination of the works, structures and materials hereinabove stated, for the appraisal of these and for the fixing of the consequent indemnity. The Commission shall also establish the procedure which is to be followed in the exercise of the functions hereby given to it, as well as in relation to its own official acts as in relation to the acts of the parties. I take it from this that the limitations of this Commission are to ascertain the value—cost, strictly the cost of the works done in connection with the railroad enterprise in Colombia, including the material (818) that has been introduced into Colombia for the use of the railroad and still in actual existence, including the primary engineering work required and incidental and necessary for the construction of that road, the plan, the surveys, the geological examination of the country, if any had to be made, the profiles of the road, and such things—

Mr. STINE: Q. Legal expenses? A. I should suppose in the examination of title to the land, or work in relation to obtaining the right of way—

The CHAIRMAN: Q. In the preparation of the charter? A. No; but that which is necessary and a preliminary to the actual construction; I take that to mean, in general terms, engineering expenses and the expenses of establishing the foundation of that road.

Q. The cost of securing materials outside and importing them into the country? A. No, because here the material is to be paid for specially—

Q. Referring to the materials used in the road, the rails used in the track, cross-ties and other materials used in the construction? A. They are to estimate the value of them, but I do not believe the preliminary work necessary to secure them is part of its value. All those things have a market value. I do not know that that is part of the work—the "*trabajos*" done.

Q. The chair understands, then, that you would not include the salary of the purchasing agent or any one outside of Colombia? A. I cannot understand how that would come in.

Q. As there is no rolling mill in Colombia, and the

rails would have to be bought outside, and for that purpose some communication would have to be had with the outside (819) world, do you consider that a legitimate part of the expense—the expense of getting those rails in there? A. That is rather difficult to answer, but as far as I have an opinion, I would say not. The impression that I have—I read over one or two of these sections very hastily this morning before being called in, and hoping that I would not be; but reading it carefully now impresses me with the opinion that what is meant here by work is all work of which the Colombian Government are going to get the benefit. Article 2 says that certain things must be turned over to the Government, and the Government is to pay for what it gets. They have included the word "*trabajos*" in there, so that the work as it stands, turned over to the Government, might include the work by which that work was done, and it is made to include all the necessary preliminaries, the surveys, planning out the route—

Mr. ROBERTSON: Q. That is, you understand it to include every legitimate expense connected with the construction, and, necessarily, part of the construction work, whether manual labor or intellectual labor, as well as the cost of the material which goes into the construction work? A. Yes; it is only right that I should give you what little reasoning guides me in saying that. Article 2 says that the Company surrenders the concession, the railroad, etc.; Art. 3 says the Company and the Government have agreed beforehand, as a just and sole indemnity, an equivalent of the sum which the Company shall prove to have spent in the work executed by it in construction and in the materials which are still in existence; that is the measure of damages which they have laid down, and on that I base my opinion; third, then there is a provision here for the confronting of the result of the actual work, as it stands there, with the books of the Company; it says they must examine the works and confront the actual results with the entries in the books of the Company, to see what went to that construction, and then there is a provision for (820) the actual inspection of the works. I listened to the testimony of Mr. Adams to the effect that the inspection must be made personally; generally I would accept Mr. Adams' opinion as correct, but now that I am testifying under oath I must be a little careful—it shall inspect, but it goes on to say here: it shall inspect the works and materials in order that it may make the proper comparisons or verifications in order to determine the facts which must serve as the basis of the fixing of the indemnity, having the privilege for that purpose to examine witnesses

and appoint experts—it is possible that it may be limited to the purpose of fixing the indemnity, or it may be that they have the power to appoint experts to make the inspection of the works; in other words, then, the inspection of the works may be made by experts to be appointed by the Commission, at least I take it that such might be the case from the reading of this document, but there must be an inspection of some kind. And that is another reason for my drawing that limitation—that the value of what the Government is to get is what is to be appraised and what it is to pay for.

The CHAIRMAN: Then, according to your opinion, it is that the Cauca Railroad Company shall turn over to the Government all its plant, and receive in compensation therefor the cost of that plant? A. Yes; I include in that cost the engineers' surveys and such preliminary work, of all of which the Governments gets the benefit.

Mr. ROBERTSON: Q. Do you consider that the Commission is authorized to look into the question of profit or loss to the Company in the enterprise? A. No; I do not

Q. The duty of the Commission is to pass upon something which the Government is to get and allow what its legitimate cost was? A. Yes, together with such preliminaries as I have referred to, and legal expenses in securing (821) the right of way, the ownership of the property necessary for the railroad, if that was acquired and turned over to the Government.

Q. Supposing the land belonged to the Government? A. Then that has no relevancy to this Commission.

Q. In any event would the purchase of property noused in construction be a legitimate expense in construct tion? A. I think that it clearly eliminated from this; a sum equivalent to what the Company can prove that it has expended in the works and construction, executed, and in the construction of the said railroad, and in the materials which were introduced for the same purpose, and they have heretofore said "which are still in existence." According to that I believe property which was not used in the railway and not turned over to the Government would be another thing with which the Commission would not have to deal.

Q. Do you find that there are three classes of property to be surrendered; first they surrender, or give up, the concession itself, which the Government originally gave them; secondly, they give up the railroad as constructed, and thirdly, they give up the equipment, or materials; is that not so? A. The Company first releases any privileges

it may have under the concession; then it agrees to deliver to the Government, within 15 days after the approval of the contract, the Cauca Railway with all its fixed and rolling stock in existence, the works, the constructions, the constructed buildings, tools; that would include everything that is attached to it.

Q. Now, do you find anything mentioned there that is not concrete material unless it be included in the word "*trabajos*," meaning that labor necessarily and directly connected with the construction; is there anything that is not concrete except such necessary labor as went directly into the construction? A. "*Trabajos*," in conjunction with the word "*obras*," is the only word I find that would include the value of such things as you have mentioned; that (822) is, the primary work not visible on the ground, but indispensable to the doing of the work

The CHAIRMAN: Q. Would that include medical supplies which were absorbed in the construction of the road? A. I should doubt it, because that would not come under the word "works;" that would come under the word "materials," and in using the latter word the Government seems to have restricted it to such materials as are now in existence.

Q. Then, the Company would not be paid for their subsistence, medical supplies and any similar things used by them? A. No; I think not—let me see; there is a clause in which they do not use the word existence; here are the two clauses in which the materials are referred to: Art. 2—"The Government of Colombia will pay to the Company a just indemnity for the construction and works that the Company may have executed during the time in which the enterprise was in its charge, and for the rolling material and other elements that have been introduced for use on the railway, and now actually exist.

Mr. STINE: Q. What does that refer to—"actually exist?" A. I will read the other article; it was on that one that I said these medicines were not to be paid for. (Continuing:) Article 3: "The Government of Colombia and the Company recognize beforehand, as a just and sole indemnity, a sum equivalent to that which the Company shall prove to have expended in the works and constructions executed by it in the building of the road, and in the rolling materials, etc., etc., introduced for the said railroad." There they do not append the words "actually existing," but, taking these two together, I should say that Article 3 has the same force and meaning, in that respect, as Article 2.

(823) Mr. ROBERTSON: Q. Did you hear Mr. Adams tes-

tify that in his opinion the words "and still in existence" qualified the railroad structures as well as the materials imported? A. No; I did not.

Q. Well, he has so testified. Now, in view of that, Mr. Fuller, I will ask you this question: Suppose, as is a fact here, that two important bridges had been costructed, and washed away immediateiy after constructiou, either because of weakness in construction or unusual violence of storms, and that this was known to the parties at the time of the execution of this contract—this Convention—would would you hold that the Government was to pay for these two bridges which were washed away, receiving only the one which stood at the time of the turning over of the road? A. That is a very hard question for me to decide just now; let me ask you this question: Suppose, instead of a bridge, that an embankment, the terracing leading from a valley, and that had been washed away—

Q. That would come under repairs, and be paid for by the Company out of its earnings; we do not get from the Company any of its earnings, although we show it to have earned a great deal of money, but the earnings of the road are supposed to cover the operating expenses. A. It is a question of translation, and it is a question having relation to the whole contract. Now, let me read this over once again—this paragraph here: The Government of Colombia shall pay to the Company a just indemnity for the works and structures that the Company shall have executed during the term in which the enterprise was in its charge, and for the rolling stock and materials and other elements that may have been introduced for use on the railroad as as they now exist, actually—now, whether these last words, "that now exist actually," refer back to the works and constructions executed by the Company, or whether solely to the materials introduced, I would not decide on the spot.

(824) Q. Is it not evident from this paper that the Government was to pay for what it was to get? A. Now, the preceding part of this same article says that the Company is to turn over to the Government the Cauca railway with all its materials, fixed and rolling, in existence. Now, there the word, "in existence," clearly refer, in my mind, to the materials. The Cauca railroad first—with—that is a disjunction—all its material, fixed and rolling, in existence.

The CHAIRMAN: Q. You have laid down the general principle that the Government was to pay for all the works in existence, that I would ask you to state how you would make the application to this particular question of the two

bridges which were washed away? A. That is a matter of opinion which it would be very difficult to answer at once: if you were to give me plenty of time, I no doubt would arrive at a conclusion, but I would not want to decide that question now.

Mr. ROBERTSON: Q. Suppose it were assumed that the rebuilding of the bridges was a matter of repairs, and not a matter of construction? A. I do not think that that would alter it in my mind.

Q. Would you pay for it yourself, if you were buying it? A. My impression would be rather against the Company on that, because if the bridge was destroyed it was not the fault of the Government in any way; that expressly says they are to have the value of all they did while they had charge of it, and are to give up all they built, etc., while they had charge of it, and if during this period, when they did carry on the building which they were authorized to do, they put up a construction which they could not protect, and which the lapse of time, or anything else, has carried off, and now at the date of compromise and settlement the thing is turned over as it is, I do not think the (825) Government would be called upon, under these terms, to pay for something which was not delivered to it; that is the way I am inclined to think, Mr. Chairman.

Mr. ROBERTSON: Q. Do you find anything in this Convention which authorizes the Commission to allow such expenses as the traveling expenses of the officers of the Company in attempting to place bonds abroad, or in visiting Bogota in an attempt to induce the Government not to forfeit the franchise of the Company? A. I think I have already answered that question in my previous statements.

Q. I want a direct answer. A. I cannot see that such an expense should enter into this.

Q. Do you find anything requiring the Commission to make an allowance for the concession granted by the Government originally? A. That is specifically surrendered.

Q. And not one of the things to be appraised? A. No; it is surrendered; I should say very clearly it is not to be appraised.

CROSS EXAMINATION BY MR. STINE:

Q. Mr. Fuller, there would be several ways of appraising the works, according to your construction, would there not, and the most rational would be to send a body of experts—expert engineers down there to do it? A. That would seem to me the most rational way of doing it.

Q. Suppose, in connection with this matter, you were informed of the following facts which do not appear in the

Convention; suppose you knew that during the negotiations of this Convention, previous to its actual consummation, that the Colombian Government had suggested the appointment of a Commission of three experts, who were to go on and examine the road and appraise its value, as it then stood, and that the Government would repay to the promoters of the (826) Cauca Company the amount that these engineers might find had been spent on the work; that the American Minister, acting for the Cauca Company, which was an American corporation, had rejected that proposition, and informed the Government that under no circumstances would they accept a mere repayment on appraisal of what the road would appear to have cost on its face or what the road on its face should show to have been spent on it; that subsequently the Government had attempted to do exactly the same thing in different language, and was again informed that the Cauca Company would not accept such a Convention; that subsequently, and prior to the making of this Convention, the President of Colombia himself expressed the opinion that he was very anxious to do what was fair and just by this Company, and that it was his intention that they should be repaid every dollar they had legitimately expended in the enterprise; now, knowing these facts, and reading that paper and that contract, is that contract capable of the construction which the Company contends for, viewed in the light of the knowledge which I have just imparted to you? A. I have only the contract itself, and it is not capable of that interpretation, and I should say, if these negotiations preceded the making of this Convention, that in the making of the Convention they had been dropped, or else the Colombian negotiators got the better of the others.

Q. That is your opinion? A. Yes.

Q. Do you think there is no possible doubt as to the meaning of the words "*obras y trabajos*," as used in conjunction with the verb "*costear*;" you said before that you gave your opinion; is it not possible that you may have been mistaken? A. That is all I can give—my opinion.

Q. Now, a number of experts, Spanish scholars and lawyers—at least one of them a lawyer, Ponce de Leon—have testified that the meaning of these words, as expressed here, include every legitimate expense which may have been incurred by the Company—

(827) (WITNESS:) You mean construction of the road?

Q. I do not limit the word "construction" as you do. By construction of the road he ased the word "construction" generically, and he included every legitimate expense;

do you think it is possible he may be right and you wrong? A. The word "legitimate" there is a stumbling-block—every legitimate expense.

Q. Leave out the word "legitimate?" A. I cannot say.

Q. This Company is to receive back the cost of construction, according to your definition; what is "construction," as you understand it? We say all the expenses in construction. A. Yes; I included in that all primary work and incidental work, outside of the actual manual labor, in a scientific way required to put up the road; but I cannot see how it could be extended.

Q. I have told you what Mr. Ponce de Leon has told us about this, and I wish to read you a number of opinions of people about this question, and to show you that there may be a doubt. I find here a letter written by Mr. Del Monte; do you know him? A. I have heard of him—not personally.

Q. He does not agree with your interpretation of the meaning of the words "*obras y trabajos*." (Mr. Stine then read all of Mr. Del Monte's letter.) So this gentleman gives a broader meaning to the words than you do? A. I do not see very much difference; it is a question now for the Commission to determine what refers to the capital account—what refers to the Company's putting itself in a position to do the work and what was necessary to do the work, though they had the capital of the universe at their disposal.

Q. Would you include in the cost of construction; suppose I were to say to you, I wish to construct a railroad from here to San Francisco, and I want you to estimate on that for me and let me know the cost, would you confine the cost of the construction merely to the cost of the materials, cost of securing the right (828) of way, cost of the labor, erection of the bridges, and the excavations and fills and so on, or would you include in that, in addition to the engineer's work, the cost of the administration of that road, in your prospectus or plan—all contingent expenses of that kind? A. If I was trying to get back from the public what I knew I would have to put in before I got through, I would include every possible item that you mention, and include interest on the outlay, interest on the money expended, and so on.

Q. And you would be including it in the cost of construction? A. That is a technicality I cannot answer; I should scarcely think it so.

Q. I will try to help you out, and I ask you to look at this book, which I have purchased lately— A. I would

include in such an estimate as I have just referred to a good many things which I think you would omit from the Convention, and I would include the details of the enterprise, the clerk hire, and so on, office hire—

Q. Why should they be excluded from this, in view of these facts? Under the original concession, as granted to Mr. Cherry, it provided that he might sell or transfer this concession to a corporation to be formed; thereby the Government recognized the corporation as the owners of the concession. In addition, it gave them the right to have their offices where they chose, in New York or anywhere else—distinctly conceded that. In view of that fact, as long as they had the right to transfer the concession to a corporation, and as long as they had to have offices in New York, would not the repayment to this Company of what they had expended on construction include the repayment of items for salary which had been paid the purchasing agent, who bought goods here in New York to send down there? A. I do not think so, because what one person could do with great facility and at very little cost another would have to pay a great deal for, and the ability and (829) readiness to undertake and carry out this work I think must be assumed when this was transferred; and what Rothschild would expend in the primary work necessary to do active work would be very different from what a syndicate of other people might have to spend.

Q. You heard the testimony of Mr. Adams, who said what would be usually spent in such cases would be the test of the propriety of the expenditures? A. Yes; usual and necessary in the production of the works and materials which are now being delivered to the Government.

Q. Do you believe the words "*obras*" and "*trabajos*" have somewhat the same meaning that the words "work" and "labor" have in English; are they synonymous? A. They may in some cases be mere synonyms, but in reference to the construction of engineering work, these two words are frequently used in the same relation; and my understanding is, having had some experience in contracts of that kind, that the words, when used jointly, express this difference: that one is the material work and result and the other is the scientific work necessary for the prepation—"*trabajos*," all the portfolio work which is absolutely necessary from the beginning to the end of construction.

Q. I am going to take up the example that my friend on the other side suggested, and which you were loath to go into; that is the question of the house; suppose I were the owner of a house and lot, which I offer to sell for the

value; suppose I was to say to you: I have a house here for sale; I paid my lawyer $500 for searching the title; for the lot, $50,000; it cost me to put up the house $150,000; I will let you have that house for the actual cost; would you include in the actual cost the cost of searching the title, the cost of the lot, the cost of the architect's plans, and the commission I have to pay him, 5% on the amount expended in erecting the house, or would you exclude the expenses of searching the title and the cost of the lot, and confine yourself to reimbursing me for the cost of the (830) house—of erecting the house? A. The cost of the lot and the cost of erecting the house, including the architect's fees, but not the cost of searching the title, because I should have to do that again to satisfy myself; that was part of the cost to you, but it was spent by you in order that you could satisfy yourself that you were not making a bad bargain, and it did not add to the value of the bargain; I should have to do it all over again.

Q. Now, another question, and that is this: will you be kind enough to examine this so-called "*Bases de Convenio*?" A. This is the memorandum upon which this final Convention was drawn?

Q. Yes; look particularly at that part of it which refers to the direction to the Commission to go there and examine the road on the ground. Look at the grammatical construction that is used there, and explain it in the light of the language used here, which says they shall go there for the purpose of making the confrontations and verifications. A. I have read that specially.

Q. How do you interpret that clause? A. It refers to the obligations of the Commission to inspect on the grounds.

Q. As to its being imperative for the Commission itself to go down there? A. I think the memorandum is more imperative than the contract, for this reaaon, that the memorandum says in exactly the same language as the Convention: it shall inspect on the ground the works of the railroad, and so on, and then there is a special clause, which is entirely separate, and is as follows: that it (the Commission) may call witnesses and experts; the doubt I had on the subject is as to whether or not the Commission could possibly examine the road by experts instead of going down itself; it says the whole thiug in one sentence, and that being the case, I thought it possible the Commission should examine by experts.

Q. Now, looking at the first part of the sentence, will you state whether or not that means that the Commission may examine the work if it deems it necessary? A. That

(831) is the purpose for which the inspection is to be made; it is understood that they shall examine the works if they shall deem it necessary to make comparisons and verifications; the literal translation of this is as follows: The Commission shall examine in the City of New York the books and accounts of the Company, shall inspect on the grounds the works of the railroad in order to make the comparisons and verifications which it may deem necessary; that is susceptible of the interpretation which you suggest —if the Commission has such clear evidence that it does not deem it necessary to make any inspection.

Q. Now, referring to this clause which you have just translated, and bearing in mind that this final Convention specifically refers to this Basis Convention, would that strengthen your opiuion as to the right of the Commission to decide whether or not it is necessary for them to go down thore and examine the work? A. (Reading Convention:) Taking these two together, what am I to do, Mr. Stine?

Q. Has the Commission, in your opinion, power to decide whether or not it shall be necessary for it to visit the works in person? A. I was going to say I would take a retainer on either side of that question; well, that is one of those cases that happen very frequently; this is accepted as the Basis, and must not be radically separated from it, and, at the same time, when a new and more complete agreement is made, it shows there are details which require further elucidation, and in the complete contract the words "to make such comparisons as may be necessary" are omitted, and it is "in order to make such confrontations as are necessary"—

Q. You are of the opinion, however, that under the provisions of that article, the Commission would have power—A. I have not said so.

Q. Under the article referred to, the Commission could send experts to make the examination, and present their report to the Commission? A. No answer.

(832) Re-Direct Examination by Mr. Robertson:

Q. Look at that again, and state whether the Commission is, or is not, required to make an inspection. A. It provides for the making of an inspection, but if you mean by that to say that such an inspection is an essential to the jurisdiction of the Commission in determining this case, I would not follow you that far.

Mr. Stine: Q. Would you say it is not? A I would say neither.

Mr. Robertson: Q. What I want is this—whether or not the provision prescribes that an inspection shall be

made? A. That is the language of it—"shall inspect."

Q. Who shall inspect? Some one must inspect. A. That is one of the duties of the Commission, as I understand; the Commission shall examine the books in New York and shall inspect; the same obligation refers to one as to the other.

Q. Now, is it not the force of this provision, with respect to the inspection of the works, that, after the Company's book have been examined, then in the interest of the Government the works must be inspected, to see that they are also in existence? A. I do not think you ought to carry me as far as that.

The CHAIRMAN: Q. As the question stands just now, it is to ascertain whether it is necessary for the Commission to go down there to see if the road is in existence on the spot; now, if the Government, since the drafting of that Convention, had sent a Commission to examine the road, and that Commission has said that the road is there—

(833) Mr. ROBERTSON: Q. In other words, does that change the contract? A. I think if I was a Commissioner, and the report of a competent body of experts was presented to me, showing that they had made an inspection and found the road all there, I don't think I should send another body of experts to see if those the Government had sent had done their duty; but, with reference to the examination of the road here referred to, that would have on effect upon your rights and duties under this agreement. I would consider it to be your right, and possibly your duty, to have a report of an inspection of that road by competent experts directly under the direction of the Commission: but as to who they shall be, or how they shall make this report, that is a matter of discussion.

Mr. ROBERTSON: Q. The point is this, whether, whatever the Government's Commission may haue done, is it going to have any effect upon this contract, unless it is by mutual consent of the parties; does whatever the Government may have done subsequently—change the meaning of this contract in any sense? A. No; it does not.

Q. Now, is it not a fact that this Convention requires this Commission to make an inspection; for the moment we shall disregard the question as to whether the inspection shall be made by itself or some one else? A. The words of the Convention are: "it shall inspect."

Q. Now, is it not the better sense of this agreement that in its inspection it shall, if it chooses, have the benefit of the assistance of experts? A. The chairman asked

me that question, and I told him I should get the benefit of the experts.

Q. The Government contends here that this provision which requires that the Commission shall make an inspection is inserted for the express purpose of giving the Government the benefit of a personal inspection of the road by an honorable board of arbi-
(834) tration, and it allows that board to take the assistance of any experts it may choose. Now, can this board, in your opinion, delegate all of its duties to other persons. In other words, can it say to an expert bookkeeper, "go and look at those books, and then come back and tell us what you think about them," and then accept that without any further investigation itself; say to an engineer: "go to South America, and we give you power to make this inspection, make a report to us, and we will accept it and be governed by it?" A. I do not consider those delegations of power; I think it would be much more reasonable and intelligent for a Commission to get an expert bookkeeper to examine the books of thisCompany than to make any pretense of going over the entries itself; I think that is an exercise of their power to get proof and evidence in the best way. I would have much more confidence, assuming the Chairman to be an engineer, devoted to that profession alone, in the evidence of a competent accountant than in his, and I think it would be better judgment on his part to get the evidence in that way.

Q. Now, do you find any power granted to this Commission to delegate its powers of inspection; is it not bound —A. I will not add anything to what I have already said on that subject. I am in doubt as to whether this power is to be exercised personally or through others, but I am inclined to think it would be a proper exercise of the function to have it done by experts in the charge of the Commission.

Q. But you do not mean to say positively that that is the force of the provision—that, by virtue of this special provision, the Commission has absolutely the power to delegate its duty to inspect, but you say, in your opinion, that may be the case? A. In my opinion the phrase can reasonably bear that construction; I am speaking of the Convention now.

(835) Q. Which is more favorable to the Company the phrase in the Convention or that in the basis? A. I rather think that the one in the basis is more favorable, and that because it allows the possibility of their not judging the inspection necessary, while under the Convention I should

take it to be imperative that there should be an inspection not necessarily personal.

But, still, you say that it does say: "shall examine." A. "It shall examine."

Q. It shall inspect? A. Yes.

Q. And is the following not as reasonable an interpretation as the one you have mentioned; that the Commission itself shall inspect, and that in the labor of inspecting it shall have the right to obtain the assistance of experts? A. I think that is possible; I would not say anything further. I do not pretend to speak with any kind of authority on this question. I have given you both sides of the matter and my reason for the faith in me.

Q. You have been asked in regard to the connection between the Basis and the final agreement; now, in point of fact, is it not, as a matter of law, the accepted rule that the final agreement takes precedence and dominates the entire situation? A. I should take is so where it is unequivocal.

Q. Suppose that in this final agreement there had been an absolute and total departure from the terms of the Basis, and yet that this final agreement had been duly signed and executed by the parties, and that they had proceeded to act under it, would it not derive all of the efficiency that might appear from its face irrespective of its following or departing from the terms of the Basis? A. Unless it was a case of mutual mistake, but, if the parties preceded under the instrument, and went on to take testimony under it, I should say the later agreement governed.

Q. Is it not a fact that the later agreement is the only (836) actual convention here? A. I should so consider it.

Q. Now, there is no way, in your mind, whereby, legally, the terms of the final agreement can be modified in any way by the Basis? A. Unless it came to a question of interpretation; if the agreement itself contained phrases which were doubtful, the same rule would apply as applied to the construction of the statutes and all agreements in a court of law; if the language is plain and requires no interpretation, it must govern; but, if it is uncertain, I think the original Basis can be referred to to throw light on it.

Q. The point we are at is this: when the final agreement is clear and specific, and an attempt is made to modify a clear statement of the final agreement by the preliminary agreement, can that be used or referred to in such a case? A. I do not believe the primary agreement could be used to modify a plain or unequivocal statement in the final agreement.

Q. But, if the final agreement is uncertain in its terms then you can refer to the past conduct of the parties, or to

anything else which would throw light on its meaning? A. Yes.

Q. Now, that is only, is it not, where there is ambiguity? A. Yes.

Q. Do you not find that the provision for the inspection is in the imperative, whereas the provision with reference to the appointment of experts is in the permissive? A. Undoubtedly.

Q. Is not the provision that the Commission shall inspect, and that it may appoint experts? A. For that purpose, possibly. I take it to say this: I do not mean to say this is unequivocal, but reasonably—there shall be an inspection at the hands of the Commission, and it may appoint experts, or it may go down there itself if it wants a junketing tour.

Q. Does it say "or it may," or does it say "shall inspect and may appoint experts?" A. The word "and" (837) is not used there in reference to the permission; the language is, "it shall inspect;" and then it says, "having the right for this purpose to examine witness and name experts." The doubt in my mind is whether the words "for this purpose" refer back to inspect, or only to the making of the verifications and comparisons.

Q. On your theory could not the Commission delegate its power to examine witnesses? A. No; because it says here that they may examine witnesses and appoint experts.

Q. We say this—if you will look at that again; explain, if you please, how it is that the Commission cannot dispense with a personal examination of the witnesses, if they can dispense with a personal inspection of the works; is it not in the imperative in both cases—"it shall inspect, and it shall examine witnesses;" does not that say, in substance, and "shall have the right for such purpose to examine witnesses and appoint experts." A. That is exactly what it says; that is what I have repeated so many times.

Q. I will ask you if this is a good translation of the Spanish: "it shall inspect on the ground the works of the railroad and rolling stock, in order to make the necessary checks and verifications for the determination of the facts which are to serve as the basis of fixing the indemnity, and shall have the right for such purpose to examine witnesses and appoint experts?" A. I think that is right.

Q. Is it not, then, the duty of the Commission to inspect on the ground; "it shall inspect on the ground," and must not that inspection be for the purpose of checking or verifying in making a determination of the facts which are to serve as the basis for fixing the indemnity; and does it not not follow in the same sentence that the Commission

shall have the right, for such purpose, to examine witnesses and appoint experts. In other words, is not the right to examine witnesses and appoint experts given in the same phrase? A. It is.

(838) Q. And the phrase "and shall have the right for such purpose" has the same qualifying effect upon the provision relating to the examination of witnesses as it has upon the phrase referring to the appointment of experts? A. I do not understand what you mean. I do not see any qualification there; one is to examine, with reference to the witnesses—they must examine, and with reference to the experts, they may appoint.

Q. "And shall have the right for such purpose;" that phrase governs something, does it not? A. Yes.

Q. Is the something this: the provision for the examination of witnesses and the appointment of experts? A. Yes.

Q. Those are two different things, are they not, which are governed by this phrase? A. Yes.

Q. Are not these two different things in part qualified by one and the same expression: "shall have the right for such purpose?" A. Yes.

Q. Then, if this qualifying phrase permits the Commission to dispense with a personal inspection for the purpose of checking and verifying, and inspecting on the spot, cannot it also dispense with the personal examination of witness by the Commission as well? A. They may not examine any witnesses, if they do not choose to.

Q. Now, if this Commission had, instead of not appointing experts, appointed experts and delegated its powers to experts, could it not delegate its powers to examine witnesses to some one else? A. I do not think that follows.

Q. What I want to get at is this: whether you see any other provision in this article by which the Commission is authorized to appoint experts that you find in the double phrase, which in the same language says that they may examine witnesses? A. I do not.

Q. Now, how then is it that if they can delegate their authority of inspection to experts th*an* cannot delegate the power, the right, to examine witnesses to experts—these same experts who go down upon the ground? A. I do not (839) assume that experts are necessary to examine witnesses, but I believe that experts are necessary to make a proper inspection of the railroad construction, and from that and the phrase as it stands there, I argue that it is a reasonable interpretation of the same that they make this inspection by experts, and yet may not delegate the right to examine witnesses, for which an expert is not required.

Q. If witnesses are to be examined, then, they are to be examined by the Commission? A. Yes.

Q. And if an inspection requires the testmony of witnesses also on the ground of the works? A. I say that any witness to be examined whose testimony is to be weighed by the Commission is to be examined by the Commissinn.

Q. And if witnesses are essential to show what the condition of the road was at the time of the delivery to the Government, they are to be examined by whom? A. The Commission.

Q. But an examination of the works is absolutely necessary? A. I find that it is required.

RE-CROSS EXAMINATION BY MR. STINE.

Q. Iff subsequent to the making of this contract or Convention, a commission of good standing of Government engineers had examined this very road and reported on the same, and its report was before this Commission, can this Commission take that official report in lieu of a personal examination or an examination by its own experts sent down there? A. I do not think I am competent to state that.

Q. What is your opinion as to that? A. I don't want to testify on that question; let the Commission decide that.

Q. Do you not think they have the power to consider that?

The CHAIRMAN: Q. I think you have already expressed youself in part in reference to that; if you have (840) any amendment or modification to make to your answer, let us have it? A. I have none.

The CHAIRMAN: We are much obliged to you, Mr. Fuller.

FRANCIS J. AMY recalled.

EXAMINED BY MR. ROBERTSON.

Q. Is that your translation of the agreement of Jan. 4, 1897, from the Spanish text? A. It is.

Received and marked Defendant's Exhibit No. 8.

It being 2:30 P. M., the Chairman adjourned the meeting until Monday, Aug. 30, at 11:15 A. M.

(Signed.) LEWIS M. HAUPT, Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER, Secretary.

Twenty-Seventh Session.

(841) Held at 30 Broad Street, New York on Monday, August 30, 1897, at 11:15 A. M.

Commission resolves to avail itself of extension of time authorized by Convention—Mr. F. Sellen called and sworn on behalf of the Government—Cross-examination of Mr. Adams by the Company.

Present—Commission, Attorneys and Counsel as before.

The Chairman called the meeting to order at 11:30, and addressed the Commission as follows: "I desire to call attention to the fact that the limit of our time, 150 days, as set forth in the Convention, is about expiring, and it is necessary for us to take some definite action upon the minutes with reference to the extension authorized under the Convention, and I would therefore submit to the Commission the following preamble and resolutions:

"Whereas, Article VIII, of the Convention approved January 4th, 1897, authorized the Commission of Arbitration created by the said Convention to continue in session for 150 days from its installation, with the privilege of extending it sixty (60) days more in case justifiable grounds of delay shall arise; and

"Whereas, After the exercise of all possible diligence it has happened that the first limit of 150 days will expire on August thirty-first, and before the Commission can possibly complete its labor; and

"Whereas, Under Article V. of the aforesaid Convention the Commission is authorized to 'determine the procedure to be followed in the exercise of the power conferred upon it, both as to its own acts as well as to the proceed-
(842) ings of the parties themselves,' it is, therefore

"Resolved, That the said Commission hereby finds it necessary to avail itself of the extension of time authorized in the Convention for the period of sixty days, and it is therefore so decreed, to wit, from the first of September, *proximo*."

Upon motion the resolution was unanimously adopted.

The Commission then discussed informally the question of proceeding to Buenaventura to examine the road on the spot, after which—

Mr. Francisco Sellen was called as a witness on behalf of the Government, and the usual oath of affirmation administered by the Chairman. Mr. Robertson stated that

Mr. Sellen was called for the purpose of verifying Professor Amy's translation (Defendant's Exhibit No. 8) of the original Convention of Jan. 4th.

It is conceded that Mr. F. Sellen is a gentleman of established literary reputation, whose works are known and esteemed both in America and Europe.

Mr. ROBERTSON: Q. Mr. Sellen, you have in your hands Mr. Amy's translation, or an exact copy of the translation, of the original Spanish Convention of Jan. 4th, 1897; have you compared the Spanish Convention with that translation which you have in your hands? A. Yes, in your office a week ago; the whole document last week.

Q. Is the translation which you have there a correct translation of the Convention as it appears in Spanish? A. Yes, sir.

Cross examination waived.

MR CHARLES F. ADAMS RECALLED FOR CROSS EXAMINATION BY MR. STINE:

Q. When you spoke about your interpretation of the meaning of the contract with reference to equity jurisdic-
(843) tion, in answer to my learned friend's question, did you use the words "equity jurisdiction" there in contradistinction to common law jurisdiction? A. Well, in my mind those two species, common law and equity jurisdiction, in the technical sense in which we would use them, were not clearly in my mind. My intended distinction was between the jurisdiction which is given by the paper which creates a Commission of this kind and that which would be had by any arbitrators with full powers to do anything that in their opinion was necessary to do justice, and I cited, if I remember right, the Cerruti arbitration, which expressly gave President Cleveland the power to do anything that he considered necessary to do justice in the case.

Q. You do not want to be understood as saying that this Commission is placed in a position, which would mean possibly the doing of an injustice to one side or the other? A. That cannot be the intention, but whether the paper provides a method in which justice is to be done, or expressly refers it to the consequent judgment of the Commission, is a question I will leave for them to discuss.

Q Do you think that this Commission must be governed by the rule which usually governs in cases of treaties and so on; that is to say, that the relations of the two parties are fixed absolutely by the terms of the contract it-

self? A. My impression is that that would be the case; of course I do not pretend to know everything about the appointment of this Commission. My impression is distinctly that a body which exists only for the purposes of the occasion gets its power from the documents which create it—that to which the public would refer for any information about it, for any official information.

Mr. STINE: That is all.

(844) The CHAIRMAN: Q. The chair would like to ask you to define what you understand from this Convention by the term "just indemnity," what is to be charged? A. Taking these words alone, without any refence to context, I would assume that it meant an accurate indemnity, a proper and accurate valuation, a technical valuation, rather than that which I would make, for instance, not knowing anything about such materials. A just indemnity assumes a fair, accurate indemnity, an accurate valuation of what is to be valued; it is a compensation; I do not believe that these two words would give the exact meaning used alone, but it would depend on the contract in which they were used, because I do not know that they have any invariable meaning. If, from anything, can be gathered the idea that the Commission is an appraising body, then it would mean proper compensation for the things to be appraised; if, on the other hand, the entire body of the document showed that the Commission was something more than a mere appraising body, for instance, if they were required to judge how far wrong had been done, as was the case in the Cerruti case, of course, the compensation would mean something more. So, I do not consider that those mere words, "just indemnity," would include each possibility as to what indemnity was intended; but my examination the other day gave me the impression that the purpose of the Commission was an appraisement of something. What the Government said was, in effect: The transaction as originally intended has not been carried out, but we, for good reasons, consent not to confiscate anything; therefore, we wish to pay for what we get, and, in order to do this, we want this Commission to tell us what the value of what we get is. That is the impression I got, and in the light of that impression I should judge the words to mean an accurate payment of the cost or the value, whatever it may be, of what the Government gets, it preferring to do that than to confiscate anything—

Q. So that the Company should be saved harmless (845) from any loss in the premises by reason of their work done during the time that this enterprise was in their hands, as stated in the 2d clause? A. I think any relevant

work done; we discussed that the other day; as to where the line would be drawn I have not had experience enough to say—as to what an engineer would consider as items of the expense actually involved in producing what the Government gets.

Q. To sum up your conclusion, then, would you classify this as a case where the Government is willing to take the property for the cost of the work done; in other words, is it a sale for cost? A. I got the impression that it is to be a sale for cost, but it might have been the value of it. As I remember some of the expressions, I got the impression that the cost of the thing was suggested as the measure which the Commission was to be guided by. The idea of payment for what they get must have been made to cover the value; it is different from the cost, but I think I remember that the papers speak of the cost, but I think as being the standard to be considered—

Mr. ROBERTSON: Q. Suppose you look at that and see words in which it is expressed in the Convention. A. (After reading from original Spanish Convertion.) Here is the definition: "The Government of Colombia and the Company recognize beforehand, or in advance, as a just and sole indemnity, a sum which shall be equivalent to that which the Company shall prove to have been spent, expended in the works and labors executed by it in the construction of the said railroad, and in the materials, in the rolling stock, iron utensils, etc., imported to be used in the same railroad;" so that under that I think they have defined the words "*justa indemnizacion*" as being to be fixed by a sum equivalent to the expenditure of the Company in the work, and so on, and in the imported materials to be used in the road.

(846) The CHAIRMAN: Q. Your idea, then, is that the Company is to be paid for the cost of the work done? A. I should be surprised to find anything else there.

Q. I would like to ask you as to whether in case there had been work done, which has been destroyed by the elements, or from other causes, but which had been done at the expense of this Company, would that, in your judgment, be included in the just indemnity? A. My answer to that would be this: That while in one sense labors or work are to be paid for which cannot be said now to exist—the labors, of course, do not exist—but some portions of the labors and works have concrete results, of which the Government will get the value; so I would, unless I made a further investigation and found out to the contrary, be inclined to the belief that labors, the fruit of which cannot benefit the Government, which is no longer embodied in

any concrete result, would be a loss to the Company, just as the loss of what they might have made by going on with the business would be. Then, unless I am wrong about my conception of the whole business, which is no confiscation, but payment for what the Government gets; though there may be something which will lead to loss on the part of the Company because it is not represented by a concrete thing which the Government is to get; that would be a loss which they themselves would have to meet—that if the Government, in order to put this road in complete order, and for the purpose of running it was obliged to supply something that the Company had not supplied—

Mr. STINE: Q. Suppose that an earthquake took place and the entire thirty kilometers were destroyed after the making of this contract; all the work ever done by this Company, according to your interpretation, the Commission would not be called on to pay this Company—

(WITNESS:) There must be some date fixed on which title was passed—

(847) Mr. STINE: Q. There was no date named.

(WITNESS:) Is there not a date of surrender named?

Mr. STINE: Yes, within fifteen days after the approval of the Convention; suppose on this day, the date of surrender to the road, or soon after, and before the Commission had one meeting, this entire road was destroyed by an earthquake; would this Commission be called upon to pay back anything, under your definition?

(WITNESS:) My personal impression is that this Convention, in some way or other, whether by express mention or impliedly, fixed a time just as to when—

Mr. STINE: Q I said within fifteen days of the approval of the Convention the transfer to the Government took place.

Mr. ROBERTSON: Q. And he calls your attention to this: That after the surrender had been made to the Government, the destruction took place, and he asks whether that would relieve the Government from paying for it?

(WITNESS:) My opinion is that it would not lead to that result of which I have said—

Mr. STINE: Q. That is not an answer to my question. I asked you whether or not, according to the interpretation which you have placed on these words, that the Government was only to pay for what they received, and if anything was destroyed, it was a loss to the Company; assuming a case that within 24 hours after turning over the road to the Government, and before it had been possible to examine on the spot any part of this road by this Commission, this whole road was destroyed by an earthquake, or some

such element, what, then, would be the just indemnity which this Commission would be called on to pay the Company?

(848) (WITNESS:) From what I know now, my idea would be either the cost or the value—the cost I would say; the cost of the things which the Company surrendered, the Commission to fix the indemnity as to the time when the transfer was made, or the road turned over to the Government; it is exactly like a sale of prooperty; there is a moment fixed when the property is at the risk of the purchaser, now, just when that time would be under this transaction, I do not know, but at some time or other it would be, in the eye of this document, a transfer of the road to the Government, and the value is to be fixed as of that moment; now, if the proceedings should be interrupted for fixe or six years, and in the meantime everything went to pieces that would not be at the risk of the Company.

Mr. ROBERTSON: Q. In your experience, you have had, I assume, to consider the application of the law to what is known as "failure of consideration," have you not? A. I do not remember any particular matter in which a decision in a case of mine turned on that point, but I have read a number of such cases.

Q. Now, if the Government had agreed to pay for this road, and if the Company had agreed to set over the road and deliver it, and under that agreement the road had actually been delivered to the Government, then the Government, if I understand you aright, could not escape paying the agreed price under the plea that since it had received the road it had been destroyed by forces of nature—that it could not come in and say that there had been a failure of consideration? A. I do not think the Government would have any such resource. We assume that, in point of fact, there was a time at which the surreuder would be complete, in that sense, then, at some point or other, the Government would have the risk, possessing control; then the Company would no longer be liable for the accidents of nature, or whatever they might be.

Q. Assume, however, that under a proposal to purchase, property has actually been received by the pur-
(849) chaser, and that nothing remains but to have an expert valuation put upon it in order to fix the price, could the purchaser avail himself of the doctrine of failure of consideration by reason of any destruction to the property while in his hands, after having received it as a purchaser? A. I think not.

Q. Ordinarily the doctrine of failure of consideration has application, has it not, to cases where after the agree-

ment to purchase, but before delivery, one of the parties questions the consideration? A. In ordinary cases, but sometimes there may happen this sort of an arrangement; that by an agreement between the parties, the party purchasing may take possession of the property, if he chooses, say for reason of his having better facilities; a better store-house for instance, but not as purchaser, but as representative of the owner, and, of course, in that case the purchaser would not have the risk; but, if as purchaser, under a complete agreement for the passing of title and by way of receiving possession under a sale of the property, although the actual fixing of the price is still to be made: if it is agreed that at what price shall hereafter be fixed he is to take it, then I think the risk passes to the purchaser.

Q. Where, as in this document there is a provision that the property shall be surrendered at a given date, and in pursuance of that it has been surrendered, and where the agreement provides that in view of that state of affairs the selling party gives up all claims against the purchasing party, would not the application of the rule be strentthened in such case that the risk was to be charged against the purchaser? A. It seems to me so, that would make it very clear that the original owner no longer owned the property, and that he had surrendered a valuable consideration.

Q. Now, I call your attention to Article 3, which in English is; "The Government of Colombia and the Company accept in advance as a just and only indemnity a sum which shall be the equivalent of what the Company shall prove to have expended on the works (850) executed by it in the construction of the said railway, and for the rolling stock, tools, etc., etc., imported for use on such railway." Now, in view of the phraseology of that article, are you able to state whether the contract, or Convention, provided for repayment of whatever, in any sense at all, the works may be deemed to have cost the Company; that is, does in include the general cost of the Company's broad enterprise, or does that article confine the just indemnity to what the Company has expended in the works and constructions and equipment—of course, by saying equipment, I mean to include rolling stock and and everything imported for use on the railway? A. I think the effect of that clause is to distinctly identify certain kinds of cost that are to be covered; it mentions it especially, expressly in a separate article; it speaks of a just and sole indemnity; that is, one which shall be suited for all purposes—shall be a due equivalent of that expended by the Company in the works and labors executed by it

in the construction of the said railway, and in the materials, the rolling stock introduced for use on the same.

The CHAIRMAN: Q. In case the Company were not paid for all cost of producing that effect on the ground, would you regard that as a just indemnity, all the legitimate and necessary cost or expenditures under that article? A. No; I think that it calls for all the cost of producing that effect; of course, back of that is the original question that we discussed the other day, whether it is the ordinary cost to any particular person who assumes to undertake the matter of that which is materially relevant to that class of work; I can imagine persons situated that to go on and produce that work would require millions and millions, which would hardly be within the purpose of this contract.

Mr. ROBERTSON: Q. Do you find that these expenditures which are to be made the measure of the indemnity (851) are only those which have been made in the works of construction, and for rolling stock, tools, etc., etc., or do you find that the just indemnity might include expenditures not made directly on the construction or for equipment, such as directors' salaries, office rent in New York, traveling expenses abroad in efforts to sell bonds, traveling expenses of officers of the Company in trips to Bogota in endeavors to induce the Government not to forfeit the charter? A. I still think about that as I did the other day—that it is not at all possible that these things, which I would consider to have been merely accidentally necessary to this case—not a thing that you would expect to find in the construction account, for instance, if the Government had undertaken to build the road. What I consider relevant in that kind of work are the expenses that any one would be met with who undertook to build the road.

The CHAIRMAN: Q. I want to ask you whether there is any special mention there of the salaries of the general officers of the Company, or anything of that kind? A. Certainly not in that clause; I do not remember having met it anywhere.

Q. In your opinion, that would be a legitimate item of expense, would it not? A. No; I do not think so; I would distinguish salaries; the salary of the superintendent on the ground would be a proper expense that any one would have to pay, but salaries which would go to keeping alive a corporation, which it would spend in any case to keep alive, even if it did not undertake this work, I do not consider part of the cost of this work; these salaries, I think, are, theoretically at least, the same whether they undertook this work or any other work; they are to keep the Company alive.

Q. Do you wish the Commission to understand that if under Mr. Cisneros' concession—the Barranquilla concession—if the Government were to take the work which he (852) has done under that concession, he would not be paid for his services? A. I think he would be paid as an engineer—

Mr. ROBERTSON: Q. Would not that depend upon the contract between him and the Government? A. Of course.

Mr. STINE: Q. In that connection, perhaps we have just as prominent an engineer as any one who has testified here. Are you acquainted with Trautwine's handbook on engineering? A. Yes; I know of it; I am not familiar with it.

Q. I call your attention to a certain portion of it; approximate average estimate for the finishing of a single track railway—I will not read the amounts, just the items—"grubbing and clearing, necessary ballast, grading, cross-ties, rails, rail joints, spikes, sub-delivery of materials along the line, laying track, fencing, small wooden bridges, land damages, engineering, superintendence, offices of the Company, stationery, interest, rents, printing, law expenses and other incidentals;" do you consider it proper to include all those things in such an estimate? A. I think that is perfectly proper in that way; suppose I were estimating whether to take a concession or not, whether to buy Mr. Cisneros' concession, for instance, I would have to estimate for my purposes as a business venture the nature and the cost of all those things—what it would cost me; but that does not provide the rule necessarily to be followed by a person buying the road. If I were buying the road, the completed road, I would not allow them for these things, whether it paid them or not to sell to me; that would be for them to say, whether or not they could afford to sell.

The CHAIRMAN: Q. Do you think the parties would sell to you in that way? A. They certainly would not sell (853) it to me for anything that the road was not worth to me; just as a man who happens to find a nugget of gold very easily gets the market price for it, and the man who sacrifices his life for a similar nugget cannot get any more, for the reason that the purchasing investor judges only the result, not what it cost a particular person to bring about that result. The investing constructor, he estimates for everything, even the advice of physicians—if he chooses, of a clergyman as to the morality of the undertaking, because he is going to defray the expenses, and unless the result is likely to pay him with a profit—all that is a proper estimate for the investing capitalist; but here, the Govern-

ment, for the sake of not confiscating something, is willing to pay either the cost—

Mr. ROBERTSON: Q. Do not the words "which it shall prove to have expended in construction" give a special significance? A. I think it provides that it is the cost which is fixed, but I think the cost which includes bringing about the results which it gets and which are directly involved; it seems to me that it is a very clear distinction between the cost required by the Company in keeping itself alive, and its expenses in doing a particular work which can be credited with a concrete result; that it is no earthly consideration to the Government that it has cost so much to do this work because of these peculiar circumstances—

Q. Take a Company like this Cauca Company, which is authorized to run lines of steamboats, and to improve and speculate in real estate, to run a bank—

The CHAIRMAN: That is purely hypothetical, inasmuch as it has not been proven that they were authorized to do anything of that kind.

Discussion between Mr. Robertson and Chairman

Mr. ROBERTSON: Or to engage in any lawful business whatsoever, and then consider that this Company has (854) merely attempted to exercise one of its chartered powers, to wit, to build and equip a railway, and consider further that the Government had claimed the right to forfeit the concession and to confiscate whatever had been put upon the ground in the course of the construction or equipment of the road, and consider that this Convention and Arbitration have been the result of the Government's claim of the right of forfeiture and confiscation, would you then say that the official salaries of the officers of the Company, or their traveling expenses in going to Bogota to endeavor to placate the Government, or their expenses in attempts to float bonds upon the road, should be embraced by the Commission as part of the moneys expended on construction and equipment? A. I think distinctly not; I would make these expenses, as stated in this question, like to the board bills, or, if you choose, the tailor bills of an individual contractor, Concessionaire, because his board bills would be just as necessary for him to produce the results, as well as his tailor bills, for he could not go there and attend to the work without proper clothes; but that would have no relevancy to this business.

The CHAIRMAN: On this broad basis which our learned friend has submitted to you, Mr. Adams, would not this reduce the question to one of a damage case, in which the officers of the Company were to be charged a penality for

failure to fulfill the conditions of their contract? A. In the net result it would be this: the Government would, for whatever reasons—I do not know what its motives are—insist only a cessation of the contract, giving up whatever claim it has to the confiscation of what it gets; in so far as payment for that covered the expenses of the Company, they would be covered; in so far as that did not cover the expenses, the Company would lose—

The CHAIRMAN: Q. Should it be shown that the Government was equally liable as the Company in its failure to (855) raise money and make its payments to the Company; if that had been waived, would it affect the situation? A. The result is to be judged by what is said in the papers, in which everything is merged; such a fact as that would, of course, have its significance. The Commission will have to be governed by what the Government has agreed to do; it may be an unfair thing, but the question is, what has it agreed to do; what is expressed in the agreement as to what the Company has agreed to do; and if that is clear, if the Commission is entirely clear in its mind that that paper explains certain things to be undertaken by the Government, then they must be guided by the paper, but if the Government has agreed to pay only for what it gets, the cost included in getting it, which it gets, then no consideration of loss to the person who undertook to get it in that condition would affect the result in my opinion.

Mr. ROBERTSON: Q. In your opinion, has this Commission anything at all to do with the question of whether one party or the other, speaking in popular language, got the best of the contract? A. I think not.

Q. Has this Commission, in your opinion, any power to go outside of the clear limitations of this contract for the purpose of doing what it might consider natural justice? A. I do not see how it should—the clear limitations. I think it is to make a certain kind of valuation with all the means provided, and whether that value, when paid over by the Government, shall do justice or not is entirely out of the case, it seems to me. There is a certain sum called for by that paper; the opinion of experts is wanted as to what that sum is to be. When the Commission has announced to the Government what that sum is I think their duty is done.

Q. That sum to be measured by the expenditures on the construction and equipment of the road? A. Yes, I conceive it to be entirely possible that in a given case the method unquestionably provided might be one which would (856) not pay the Company all its losses. The question of whether it would or not is a question of construing the contract.

Q. If I understand you aright, you consider that this Commission has been created by the Convention to be an appraising body rather than an equitable tribunal to ascertain what, under all the circumstances, would be a just settlement between the Government and the Company? A. I think it is all a question explained by the language of Article 3, in which there is an expressed definition of the just indemnity and which amount was to be all. It says that it was agreed on in advance to be a sum equivalent to the amount expended by the Company in the work and so on, and in importing materials for the said railway, so what the Commission is to do is to answer the Government this question: what amount has been expended by the Company in the work, labor, and so on.

Q. Now, you have read the entire convention, have you not? A. I believe I read it all through the other day. I would not like to stand a cross-examination on the whole of it. Yes; I read it the other day in the Spanish here to see whether there was any other provision here than the first one.

Q. Now, do you find in the Convention any provision which will allow this Commission to use or employ as the measure of indemnity anything not directly connected with the construction or equipment of the road? A. I do not remember having seen anything which in any way qualified that express definition.

Q. Now, Mr. Adams, will you please state your opinion to the Commission as to this point, whether or not the decision of a tribunal such as this would have any force or effect in case the tribunal should exercise functions not granted to it by the instrument of its creation? A. My opinion is that a Government could without disgrace—

Mr. STINE: I object to that answer.

(857) (WITNESS continuing:) If the Chair will allow me, I will state the reason why I began that way: it is perfectly well understood among all authorities on international law that the only sanction for the maintaining of treaties is the fear of loss of the good opinion of other Governments and the people by those Governments who would fail to fulfill the obligations of such treaties, there would be disgrace in a beliberate breach. It is just the same in the realm of the civil law. It is practically the same, in my opinion, to say that any unjustifiable action of a tribunal would not be binding on the Government which created it. If I may so say, this point has actually arisen within the purview of my personal experience, that Counsel for a Government took the definite ground because the scope of

what had been intended by the Government had been exceeded that it was not binding upon the Government to observe the decision, except in so far as it felt it proper.

Mr. ROBERTSON: That is all.

The CHAIRMAN: Mr. Adams, we are very much obliged for your evidence.

It being 1:25 the meeting adjourned until 11 a. m. the following day.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.

Secretary

Twenty-Eighth Session.

(858) Held at No. 30 Broad street, New York, on Tuesday, August 31, 1897, at 11 A. M.

Company agrees to Government's estimates of cost of construction—Stipulations as to Operation, Maintenance, Revenue—Secretary's Remuneration—Minutes are authorized to be printed.

Present: Commission, Attorneys and Counsel as before.

The Chairman called the meeting to order at 11:30.

Mr. STINE: Mr. Chairman, I will state that Mr. Cisneros and Mr. Robertson and also Mr. Pena, who has just been spoken to about the matter—we have been discussing a plan which was to have for its object the avoiding of the necessity of the Commission's going down on the ground to examine the works, etc., and in order to clear up the mooted point as to what the contract means, Mr. Cisneros made the suggestion that if the Company would accept the Government's figures as to the cost of construction, and the value or the price of the rolling stock, and the other things which are conceded by the Government to be due to the Company—that, then, they would feel inclined to waive that provision of the Convention. In talking it over with these gentlemen, Mr. Robertson suggested that if we could find a middle line on which we could agree; that is, taking

the total expenses of the actual cost of construction, as testified to by Mr. Cisneros and Mr. Carter, and then taking our books and figures, which we have, we could probably reach a point somewhere midway, because there is no very (859) substantial variation in the two, and agree on that, providing, of course, that neither side waives any rights under the Convention which it may have, by reason of such agreement.

Mr. ROBERTSON: That is a substantial statement of that matter—of what I said, that would, in my judgment, tend to simplify these inquiries very much indeed, because then it would remain only to ascertain whether the Government had included what, within the terms of the Convention, should be properly allowed as construction.

Mr. STINE: That would leave that one question only.

The CHAIRMAN: The Chair was about to inquire whether if you understand each other as to the meaning of the word "construction."

Mr. STINE: Mr. Robertson has made it very clear, as to his last statement; we have different views as to what that means, of course, and it is for the Commission to determine what it does mean. When I said actual construction I meant physical construction and nothing else.

The CHAIRMAN: I think this is a very happy solution of one of the difficult points at issue.

The Commission took a recess at this point to consider the question of agreeing on a settlement as to the actual cost of the physical construction.

After recess and consultation between the members of the Commission, the Chairman directed that the following stipulation be entered upon the minutes:

"It is stipulated by the parties to this controversy that in fixing the amount expended by the Company upon the following items of construction work and equipment on and of the Cauca Railroad, the Commission shall find, in lieu of an appraisement of the items, that said Company expended on said items the following sums, that is to say:

Surveys	$22,805	00
Completing road from K. 27.100 to K. 29.750.	40,652	58
Completing road from K. 29.750 to K. 36.470.	133,546	55
Work beyond San Jose	15,328	01
	212,332	14
Rolling stock	21,577	00
(860) Making in all	$233,909	14

This stipulation is without prejudice to any claim or defense of either party relative to any matter not specifically mentioned above."

Mr. STINE: We are willing to have a stipulation added that both parties agree that the receipts and the cost of operation about balance, and that, therefore, the same shall be eliminated from consideration.

Mr. ROBERTSON: Why not stipulate, if we can, as to just what they do amount to; there seems to be an excess there—

Mr. STINE: Mr. Cisneros says he is willing to waive the excess.

Mr. ROBERTSON: The trouble I see with that is that it might make it appear that these are proper items to be considered.

Mr. STINE: No, you can especially reserve that; you can say it is agreed that the operation expenses and the receipts are considered as balancing one another, and need not be further considered by the Commission.

Mr. ROBERTSON: As the attitude of each party is understood, will it not be best to make a simple stipulation which will merely exclude these items, without justifying any inference that they are either conceded or deemed to be within the Convention?

The following stipulation was then dictated by Mr. Stine and assented to by the parties: "It is hereby stipulated and agreed that the two items in the account known, first, 'Operation and Maintenance,' and, second, 'Revenue of the Railway,' derived from operation, are not to be considered by the Commission in determining the questions submitted for their consideration. This stipulation shall be (861) without prejudice of any kind to any claim or defense of either party relative to any other matter."

Mr. STINE: It is understood that if, in laying down the general principles contained in the above stipulations, either side shall have unwittingly or mistakenly included any matter not intended to be covered by either side, then that either side shall have the right to correct such erroneous conclusion.

Mr. ROBERTSON: On behalf of the Government it is stated that while the Government's representatives do not feel authorized to modify the Convention by any express waiver of any of the provisions thereof, they feel that the provisions of the foregoing stipulations are in the true interest of justice; and, in that view, they will at once communicate with the Government of Colombia by cable and advise it of their views, and request its ratification of said stipulations.

Mr. STINE: Might I suggest, Mr. Chairman, that in view of these various stipulations we have entered into to-day, that we take an adjournment sufficiently long to enable the other side to hear from their Government, for it becomes necessary for me to know whether or not these stipulations will be acquiesed in in order to determine on what points to examine my witnesses that I expect to call.

The CHAIRMAN: That is agreeable to the Commission. It is so understood that sufficient time will be allowed for you to hear from your Government. When we adjourn it will be subject to the call of the chair. There are one or two other questions which we can consider at this meeting.

The Chairman then asked the Secretary, Mr. Miller, if he would kindly leave the room for a few minutes. The Secretary having left the room, the Chairman suggested to the Commission the consideration of the work of the Secretary, the competent manner in which it was rendered, and the labor which had been required of him in the performance of his duties, further stating that although Mr. Cisneros had kindly offered to the Commission the services of Mr. Miller gratis, still the work had reached such proportion—much beyond what the Commission (862) had expected when Mr. Miller's services were so accepted—that he believed the Commission should compensate Mr. Miller, either by the payment to him of a monthly salary since the beginning of the hearings, or otherwise, as they might decide. The matter was then discussed by the Commission, after which the chairman directed that the following resolution be entered on the minutes:

"Resolved, That the Commission pay the Secretary, Mr. Miller, compensation for his services at the rate of $150 per month, to date from the day of his appointment, viz.: April 3rd, 1897."

Mr. Miller was then requested to return to the room, and upon his returning the chairman said:

Mr. Miller, we take much pleasure in notifying you that we have decided on a compensation for your services of $150 a month; we think you have well earned and deserve the same.

Mr. MILLER: I am very much obliged to the Commission, and am pleased, thanks to the kind permission of Mr. Cisneros, to have had an opportunity to be of some service to it.

It was also decided to have the minutes printed both in Spanish and English, the expense of such publication to be divided between the parties, but the cost of the translation to be charged solely to the Government.

The CHAIRMAN: The Commission stands adjourned subject to the call of the chair.

(Signed.) LEWIS M. HAUPT, Chairman.
MANUEL H. PENA,
Commissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER, Secretary.

Twenty-ninth Session.

(863) Held at No. 30 Broad street, on Friday, Sept. 10, 1897, at 11 A. M.

Chairman's Renumeration—Offer by Government of cablegram from the President of Colombia—Mr. C. F. Schramme recalled by the Company—Written opinion of Mr. Ponce de Leon—Conclusion of evidence on both sides, with privilege to Government to introduce cable dispatch to President Caro and his reply, if such dispatch be sent and such reply be received.

Present—Commissioners, Attorneys, and Counsel as before.

The chairman called the meeting to order at 11:10.

Upon motion of Mr. Cisneros, the chairman was asked to kindly retire from the room for a few minutes, which he having done, the matter of proper compensation of the chairman was discussed by the other commissioners and the attorneys. A mutually satisfactory arrangement having been arrived at, the chairman was requested to return to the room; whereupon Mr. Cisneros addressed him as follows: "Mr. Chairman, we have been considering that your remuneration for services on a case like this had not been properly settled, and we have agreed to pay you the lump sum of $6,000 for the whole time required of you; is that agreeable to you?

The CHAIRMAN: I need hardly say that this amount and the conclusions which you have reached are a surprise to me, and I feel they are undeserved. The question arose from the fact that the compensation had never been very definitely settled, but Mr Adee stated that it would not be less than a certain amount, which would be determined at the final settlement according to the amount of time con-
(864) sumed—that the final settlement would probably reach $5,000. I certainly feel very deeply indebted to you all for your kind consideration.

The question as to the contents of the inventories of property originally turned over by tde Government to the Company, and of property subsequently turned over by the Company to the Government, came up for discussion. Mr. Robertson suggested that Mr. Cisneros in estimating upon the cost of construction had given the Cauca Company the benefit of all materials which, in his opinion, should have gone into construction; and now, inasmuch as considerable quantities of the materials which had originally been turned over by the Government to the Company were applicable for use on construction, it is fair to assume that what of such property was suitable for construction had been taken by the Company and used for that purpose, and that it would be the proper thing for the Commission to endeavor to ascertain what proportion so turned over had been used for construction, so that the Government would have the benefit of it in some way. Mr. Robertson contended, however, that the Government's position had been, from the start, that nothing but expenditures upon true construction and equipment were to be considered before this Commission.

Mr. STINE: The Company, in answering, states that it received certain materials which were used for both repairs, maintenance and construction, but the value of which was never ascertained, as it received the same gratuitously; that the same were used in the road, and that the Company contributed materials far in excess of the amount turned over to it for purposes of construction, which more than offsets the amount credited to the Company. Furthermore, the Company claims, as it has throughout, that in estimating on the award, the question of construction is not the sole question to be considered by the Commission.

The CHAIRMAN: The chair will state that our last adjournment was taken for the purpose of giving the representative of the Government time to communicate with (865) his Government in regard to the action taken at that meeting, and the chair will ask whether a return has been received.

Mr. ROBERTSON: We have received a telegram from the Government, which, translated into English, is as follows: "Pena—Cisneros, New York"—

Mr. SCHRAMME: Allow me to interrupt; might you not give the Spanish of the telegram?

Mr. ROBERTSON: I am going to hand it in; you want it on the record in English, dont you? (Continuing to read telegram): "If you judge unnecessary inspection Buenaventura, do not do it." That is signed "Esguerra"—

Minister of Hacienda. In view of this telegram from the Government, Mr. Cisneros states that the Government waives the right to insist that the Commission visit Buenaventura to inspect the road on the ground.

Mr. C. F. SCHRAMME recalled, and examined by Mr. Stine.

Q. Mr. Schramme, did you have charge of the negotiations between the Government of Colombia and the Cauca Company, at the time of the repayment of the $50,000, earnest money, by the Government to the Company? A. I did.

Q. With whom did you carry on these negotiations? A. First with all the Ministers, and afterwards—after the Ministers had given their consent—with the Council of Ministers, in the presence of President Holguin.

Q. Please state what occurred? A. I arrived in Bogota in the early part of August, 1891, and inasmuch as we turned over to the Government about nine kilometers—six kilometers from Cordova towards San Jose, and completed and put under traffic, I demanded the return of the $50,000.

Mr. ROBERTSON: We object to this line of testimony, and renew our objection against one of the judges being a witness.

(866) Mr. STINE: I want to say here that as long as you raise that objection, I also want to enter my protest against the reading at the time, by Mr. Pena, of an opinion handed in, and part of this record, in which he sets forth in glowing terms the generosity of the Government and the shortcomings of the Cauca Company, and also called attention to many facts on which no testimony of any kind was at that time before the Commission; it is only in order to balance favors.

Government's objection overruled. Exception.

A. I demanded the return of the deposit of $50,000 on the plea that we had delivered to the Government and put under traffic six kilometers of railroad, from Cordova forward, towards Cali, and that these six kilometers at the rate of $38,000, the value mutually agreed on under the terms of the Concession by both parties, amounted to more than $200,000, or the sum set down as having been necessary for the return of the $50,000. After explaining to the different Ministers our position, they did not give a decided opinion, but intimated that they accepted it.

Mr. STINE: Never mind that; state what was done.

(Witness continuing:) The chairman, who was absent from Bogota, returned about the middle of August, and convened a council of Ministers, and, without a dissenting vote, it was decided in that council to return to our Company the $50,000, inasmuch as we had complied with all the conditions necessary under the Concession. Instead of paying this money in cash, as it ought to be—in gold—the Government asked me to take these so-called libranzas.

Q. That is as far as I want you to go, because I want to ask you a question; was there a loss on these libranzas? A. Yes, a most serious loss.

(867) Q. Did you put in the claim before the Commission what this loss was, all told—

Objected to by Mr. Robertson. Overruled. Exception.

A. No.

Q. You have stated that there was a loss by the burning up of another lot of these libranzas in one of the buildings owned by the Company; what was the amount of the money burned?

Same objection, same ruling and exception.

A. The money burnt in the fire was between twenty-three and twenty-four thousand dollars.

Q. Is this in the claim? A. It is not mentioned, although we have notified the Government of the loss.

Q. You are familiar with the business that has been carried on by this Company during its existence, both the Colombian Construction & Improvement Company and the Cauca Company, are you not? A. Yes.

Q. Have either of these Companies ever engaged in any business outside of that connected with the constructing, building, repairing and operating of the *Ferro-carril del Cauca?* A. In no other business whatsoever.

Q. Have they ever attempted to exercise any of the rights which they have under their charters? Any other rights? A. No, sir; no other rights.

Q. Have any moneys been expended either directly or indirectly in any other directions than those of building, repairing and operating this railroad, and the expenses connected therewith? A. All the moneys disbursed by the Cauca Company and the Colombian Construction and Improvement Company have been for the sole purpose of building, operating and managing the Cauca Railway.

(868) Q. Please state whether or not there was any dis-

cussion between you and President Caro as to the scope of the Convention with special reference to the extent of the payment which was to be made by the Colombian Government to the Company?

Objected to by Mr. Robertson as incompetent and immaterial. Objection overruled. Exception by the Government.

A. There was.

Q. State what that was? A. The conversation was that the President expressed to me his desire that no American should lose a dollar in Colombia, and that the Government's desire was that our Company should be reimbursed for every dollar we had legitimately expended.

Mr. ROBERTSON: That is all in before—

Mr. STINE: I want to get it out in detail.

Q. Did you call the President's attention to the particular wording of this contract, on the question of the interpretation or the meaning of these words, *obras y trabajos?* A. I did.

Q. Please state the conversation?

Same objection. Same ruling and exception.

A. When we fisst put down the basis he left out the word "*costear.*" He had it, if I think correct, "*lo que la Compania haya gastado en las obras y trabajos hechos por ella.*"

Q. Which, translated, would be what? A. The money expended in the works done by the Company; but I wanted it a little stronger, and I said to him, I want all of the money that our Company has justly expended embodied, and I believed the word "*costear*" was stronger than "*gastar,*" and he changed it to the word "*costear.*"

Q. Did he say to you that, in his opinion, the addition (869) of the words "*haya costeado*" would cover every proper and legitimate expense by this Company?

Same objection; same ruling and exception.

A. Yes.

Q. After you had had this conversation with the President as to the meaning of these terms, did you consult with any lawyers in Bogota or any other places? A. I consulted with Julio Mallarino; I consulted with Victor Mallarino; I consulted with Escobar.

Q. Who is he? A. One of the foremost lawyers in Bogota; and all three agreed with me that there could be no other meaning than that our Company was to be reimbursed, indemnified, for all expenses they had incurred.

Q. Did the question of whether these phrases in paragraphs 2nd, 3rd and 5th refer only to the mere physical construction, or whether they referred to a repayment of all legitimate expenses of the undertaking, come up? A. It was never intimated that it referred only to the physical work; the conclusion was unanimous that it covered all legitimate expenses of every kind.

Mr. ROBERTSON: I wish to make the same objection to all of this class of testimony, that it is incompetent and immaterial, and that the witness is incompetent.

Q. You are familiar with the Spanish language? A. I am.

Q. How many years have you known the Spanish language? A. I arrived in Mexico at the age of sixteen; I was brought up there; I lived in Mexico nine years, and I acquired a thorough knowledge of the Spanish language, and then I have been here in New York for years correspondent in the Spanish language for some of the biggest houses, up to '86—did business with Mr. Cisneros—and I (870) have constantly read and studied Spanish.

Q. In your opinion, is there any justification for limiting the words, as used in the 2nd, 3rd and 5th paragraphs of the Convention of Jan. 4, 1897, to the mere local expenditures for work, labor, material and local administration expenses connected therewith? A. In my opinion, there is not the slightest pretext that these words can have any such limited meaning.

Q. Is there any word in the entire contract which in your opinion justifies the conclusion that it was intended to be for local expenditures only—the reimbursement? A. There is not.

Q. Would a reimbursement for local expenditures alone be a just indemnity for all the work done by the Company? A. It would not. In the first place we yield up a valuable concession; in the second place, we have turned over the whole road to the Government. They virtually step into our shoes; and it was the upshot of the compromise—the desire to bring about an amicable settlement of all the difficulties pending, and, therefore, the Government said: "Will you give up your Concession and yield up the railroad, and we will pay you back what you have expended."

Q. In course of the negotiations for settlement, was a cash sum offered you? A. The President offered to give me $400,000.

Same objection to last question; same ruling and exception.

Q. In gold? A. In gold.

Q. Now, the Government's contention is that the total amount expended for construction is two hundred and thirty odd thousand dollars. Consequently, if you had accepted the President's offer of $400,000 in gold, you would have received nearly $200,000 more than the Government claims you are entitled to receive under this Convention; is that so or not? A. That is so.

Q. Turning now to the question of what should be
(871) properly included in the question of cost of construction of a railway—did you hear the evidence of Mr. A. G. Menocal on the question of what should properly be included? A. I did.

Q. You heard me ask him the question of whether he would include contingent expenses of administration, etc., in making an estimate of the cost of construction, did you not? A. I did hear you.

Q. You heard him reply that he did not think that should properly go in? A. He so stated.

Q. Only local administration? A. Yes

Q. Will you please look at this book and state what it is? A. It is the Report of the Final Location of the Nicaragua Canal by Mr. Menocal.

Q. Have you read this book? A. I did.

Q. I should like to call to your attention to page 36 of same, and, as your eyes are not good, I will read for the benefit of the Commission, what it says here: "Grand Recapitulation: Eastern Division, so much—twenty-three millions; San Francisco Division, five millions (I do not give the smaller figures); Lake and River Division, fifty-six millions; Western Division, seventeen millions, making a total a fifty-two millions." Then follow the words "Surveys, Hospitals, Shops, Management and Contingencies, 25%, $13,168,035.45; a grand total of 65 millions. Respectfully submitted, A. G. Menocal, Chief Engineer."

Book offered in evidence by Mr. Stine; received and marked "Claimant's Ex. No. 54."

Q. I hand you here another book, and ask you to look at it. A. That is the Nicaragua Canal Construction Company—Report of the Board of Consulting Engineers.

Q. On account of your eyes I will read for you: "Eastern Division"—then follows sections giving the amounts; "Lake and River Division, Western Division"—then follows the line: "for Engineering, Management, labor agen-
(872) cies, shops, police, sanitary service and incidentals, $6,250,000.?" "Add to cover specified and unspecified contingencies of construction 20% gives $46,332.62." This is

signed by John Bogart, E. T. D Meyers, A. M. Wellington, H. A. Hitchcock; and then it states: "I concur in the foregoing estimates as being in the aggregate ample for the purposes stated, Charles T. Harvey."

Mr. Stine offered the book in evidence; same was received and marked "Claimant's Ex. No. 55."

Q. Please state whether or not you heard Mr. Fuller testify that in his opinion a proper charge would not be for hospital service? A. He did so testify.

Q. Please state whether or not you heard others of the Government's witnesses testify that medicines, and provisions, and other similar charges would not be proper charges under the wording of this Convention? A. I did.

Q. Please look at this book, and state what it is. A. Civil Engineer's Pocket Book, by Dr. John C. Trautwine.

Q. On page 415—in order to save your eyes, I will read it to you; there is a statement or approximate estimate—I have read this before, but I want to have it inserted as evidence. Now on page 415 I find the following: "Approximate average estimate for a mile of single track railway; grubbing and clearing, grading, ballast, crossties, rails, spikes, rail joints, subdelivery of materials along the line, grading track, fencing, small wooden bridges, trestles, sidings, etc., land damages, engineering, superintendence, officials of the Company, stationery, instruments, rents, printing, law expenses and other incidentals.

Mr. Stine: I would like to offer this book in evidence. Received and marked "Claimant's Exhibit No. 56."

(873) Q. I have here a book entitled "Engineering Specifications and Contracts, Haupt." I find in the title page that it is by Lewis M. Haupt: I ask you to look at page nine, and I will read it for you: "Estimates and Measurements. That an engineer may be able to present a case properly in his advertisements, one will have to determine for his own guidance in giving the amount of work to be done; it will be necessary for him to prepare from the drawings, or from surveys, approximates of quantities as well as of cost. In making up such estimates it must not be forgotten that there are other items of expense than mere cost of materials and labor; to these must be added the expense of engineering, superintendence, the tools necessary, instruments, buildings, etc., known as the plant, interest on the money invested, a fair allowance for contractor's profit, * * * insurance, if necessary, and a percentage for contingencies, such as damage to property or to the work, whether from the elements or from accidents."

Mr. Stine offered Prof. Haupt's book in evidence. Same was received and marked "Claimant's Ex. No. 57."

Q. Mr. Schramme, were you ever asked some questions some time ago, on your direct examination, in reference to the power of attorney which has been introduced in the evidence, which the Cauca Company granted to Mr. Cherry before he went to Bogota, and which was filed with the Government? Please state the exact nature of the conversation, if any, between you and anyone connected with the Government at that time.

Same objection, same ruling and exception.

A. That power of attorney was handed by me to the Minister of Hacienda. In reading it over, the Minister made the remark that it was subject to a contract between Mr. Cherry and the Cauca Company, and also a contract between Cherry and the Colombian Construction & Im-
(874) provement Company. He said, "Of course, with this the Government had nothing to do." I said, "No; if the Government settles with the Cauca Company the Cauca Company will have to settle with Mr. Cherry, for it is an amount due Mr. Cherry for the concession," and he thereupon accepted the power of attorney.

Q. Did you call his attention to the fact of the existence of a contract between Mr. Cherry and the Colombian Construction & Improvement Company? A. Yes, it was in the power of attorney.

Q. Did you tell him the nature of the contract? A. I told him what the Company owed Mr. Cherry for the concession.

Q. Will you be kind enough to take the various pay-rolls, which Mr. Robertson wants us to prove, and testify as to their nature, what they are and so on? A. I have not got them all here.

Q. (To the Commission:) Will you allow us to testify to them in bulk, and they can then be handed to Mr. Cisneros, to be delivered back to us?

Mr. Robertson: Assuming that, for the purposes of this inquiry (considering the broad view of the chair in admitting practically everything that is likely to throw light on the question), that these would be admitted even if I put a further objection, which would proper in a court of law, I suggest that you offer them in a general way, and I will make a general objection at the same time.

Mr. Stine: I offer them in the way suggested.

Q. Do you know where these different pay-rolls came

from? A. They came from the office at Buenaventura, and were received at the New York office in the regular course of business.

Mr. ROBERTSON: We enter a formal objection to these, the same that we entered to the others—that so far as any (875) of the items refer to anything but construction they are not proper items to be considered—and we also suggest that, inasmuch as the figures on actual construction have been practically accepted by both sides, anything outside is immaterial.

Mr. STINE: That part is all right; it is only for regularity sake. I do not want these pay-rolls printed. I simply want to make my case complete; that is why I offer them.

Mr. STINE: I also want to call attention to one other fact; that is, that the amended report of Mr. Barney was received, and no comments made on it, and no further examination of Mr. Barney took place. I assume that that is before the Commission for examination, and that it is part of the record, and will go into the exhibits.

The CHAIRMAN: Yes, I assumed so; that is to go in as part of one of the documents; that will follow as a supplement to Mr. Barney's report at the proper place.

The opinion of Mr. Ponce de Leon as to the scope of the contract, with special reference to the meaning of the words "*obras y trabajos*," was handed in and read, and it was agreed that the same would be considered in evidence without Mr. Ponce being present to declare that it was his opinion, Mr. Stine's statement that it was signed by Mr. Ponce de Leon being deemed sufficient by the representatives of the Government.

The opinion of Mr. Ponce de Leon was then read as follows:

"I have read with great care the Convention of Jan. 4, 1897. I have analyzed the various separate paragraphs, and particularly the first, second, third and fifth paragraphs. To my mind the intention of the parties, as gathered from the text of the Convention, was clearly the repayment to the Cauca Company of a just indemnity (876) for their privileges under the Concession, and for all work and labor made by them. If it had been the intention of the parties to limit the recovery to the payment of the amount expended in physical construction alone, exclusive of whatever mental labor was required to carry on the enterprise and of their rights, the contract would clearly have so stated, and would have used some phrase as

"*los gastos de la construcion.*" The fact that the words used are "*obras y trabajos*," shows that the person who drew the contract meant to express an indemnity for all the work of whatsoever kind done in conjunction with the enterprise, and nothing less.

Article second states, "The Company surrenders absolutely the concession, etc., etc., and shall deliver to the Government of Colombia the Cauca Railway, with all its fixed plant, rolling stock on hand, works, buildings, tools, utensils of all kinds, appurtenances, etc., etc. In consideration therefor, the Government of Colombia is to pay to the Company a just indemnity for all work constructed by the Company during the time the undertaking has been in its charge, etc."

This article second is really the important article of the Convention; it fixes clearly what both parties are to do, and what they are to receive. On the one hand, the Company not only gives up to its fixed plant, rolling stock on hand, works, etc., but it also surrenders absolutely the Concession under which it has been operating; and the Government, in consideration of these two acts (the surrender of the Concession, and the turning over of the railway as constructed up to that time), agrees on its part to pay a just indemnity for all work and labors of the Company during the time the undertaking has been in its charge.

From this it will be seen that the Company is not merely giving up the concrete and material property which it owns, but also the immaterial property in the shape of its Concession, and its rights thereunder, and in payment therefor the Government of Colombia agrees not only to pay a just indemnity for all materials, things which the (877) Company is turning over, such as the rolling stock and other things imported by the Company for the use on the railway, which are now in existence, but also for all the work and the labors of the Company during the time the undertaking has been in its charge.

The words "*obras y trabajos*," when used together, as they are used in this Convention, are generic terms corresponding closely to the English equivalent "work and labor." The Government, in other words, is to pay the Company for all the work and labor which it has expended. It is not to pay the railway; it is to pay the Company, and the Company cannot be paid for all its work and labors unless every item of expense to which Company has been put, for the obligations which it has incurred and still owes, have been paid to it.

Of course, any expense that the Company might have

incurred improperly or wastefully, or fraudulently, would not come under this head, but unless it can be shown that the expenditure was unnecessary, or wasteful, or fraudulent, the Company is entitled to receive it back.

Had it been intended that this contract should be a mere contract of appraisal; in other words, a contract having for its object the taking of stock or the making of an inventory, and simply including how much should be paid for each article delivered, and each piece of work done, and nothing else, the contract would say in so many words: first, that men versed in appraisals of this kind should be selected as the arbitrators, whereas the contract is wholly silent as to the qualifications which the arbitrators should have. In the next place, it would not have been necessary to have proceeded to New York to have examined the books of the Company, but the appraisal might have been made, and should have been made, on the spot. Besides this, there is no expression in the contract which indicates that a mere appraisal shall be made. The contract, on the contrary, states that the Company shall receive a just indemnity for all its work and labor, and if it were a mere contract of appraisal then the work of the (878) engineers would be superfluous. The work done by the Manager could not be determined, and would not be a proper part of the expense.

"If, instead of its being a railway, it were a stock of goods in a commercial house, and the narrow interpretation sought to be put upon the general scope and meaning of this contract were applied to the taking of the stock in the business house, then the salaries of the employees, the legitimate profit to the owner, etc., etc., could not and would not be included in an appraisal. The market value of the goods would be taken, and that would be all.

"That this was not intended is shown by the fact that, as I am informed, the cost of administration, so far as it applies to the work on the spot, the engineers' expenses, the salary of the manager in the place, have been construed to be part of the '*obras y trabajos*.' The drawing of the line at the salaries of the engineers, managers, superintendent, clerks in the office in Colombia, etc., is purely arbitrary, and without warrant in fact. Either all the disbursements and expenditures made for mental labor in connection with the enterprise must be included, or none of them must be included. The words as they stand to-day in the contract will admit of no other construction, in my opinion.

"Examining the entire contract with a view of getting at a just and fair conclusion as to what its true scope is, I am forced to the unalterable opinion that this was a sale of

an existing road by the Company to the Government for a price which was to be the equivalent of the amount which had been properly expended by the Company, and not a mere stock taking of the naked physical result of the enterprise; as in view of the contract, I firmly believe that the Government of Colombia entered into this agreement with absolute good faith and with the purpose of acting justly and honorably, and I cannot accept the interpretation of the contract in the narrow form pretended.

(Signed) "NESTOR PONCE DE LEON."

(879) Mr. ROBERTSON: I understand that this is to be considered as a sworn opinion; that it is on the basis of a sworn opinion, and received as though he were here to swear that it is his opinion.

Mr. STINE: That is it. I also wish to state that I have a translation made by Mr. Ponce. Mr. Schramme tells me that he gave it to me, but I have not yet had a chance to look for it.

Mr. STINE: That is all, Mr. Schramme.

The Chairman then said that Mr. Robertson was at liberty to cross examine the witness.

Mr. ROBERTSON: We have taken the position consistently throughout that Mr. Schramme has no right to go on the stand as a witness, and we therefore refuse to cross examine him lest we may be charged with having accepted him as a witness.

Mr. STINE: I offer you the opportunity to cross examine him, and agree beforehand that such action on your part shall not imply your acquiescence in his right to testify.

Mr. ROBERTSON: We do not, nevertheless, propose to be caught in any illogical action.

EXAMINATION CONTINUED BY MR. STINE:

Q. Mr. Schramme, please give in detail the conversation which you have heretofore testified took place between you and Mr. Caro, the Vice-President of Colombia, on the occasion when your acting as one of the arbitrators on this Commission came up for discuscussion?

Objected to by Mr. Robertson on the ground that Mr. Schramme was incompetent as a witness, being a member of the Board.

Mr. STINE: Is this a new departure?

Mr. ROBERTSON: Also on the ground that the matter ought to be brought out by the question is in itself incom-

petent, irrelevant and immaterial, and upon the further ground that the same question has been asked him before, (880) and that in response to it he has given us, as nearly as he could, as he stated at the time, the precise language of the conversation between himself and the Vice-President on this subject.

Mr. SCHRAMME: After Mr. Caro and myself had completed the contract or the Bases of the Convention I stated to him that now that we had reached such an amicable settlement of the differences pending, I wished to resign and did not wish to act on the Board of Arbitrators, being an interested party, as he perfectly knew.

Mr. STINE: Q. Do you mean that in addition to that you were a partisan in the matter? A. I did not consider myself a partisan, but I insisted that our Company should put on the board a person without any affiliation or interest in our Company. Mr. Caro then told me that he wished me to take a seat on the Board as Arbitrator.

Q. In spite of these statements? A. Yes.

Q. Please state whether or not you at any time expressed publicly any opinion as regards the position taken up by the Colombian Government in taking away the Concession of the Cauca Company? A. I frequently expressed my opinion to the Ministers and to many other persons.

Q. What did you say? A. That I considered it wrong.

Q. Did you denounce the Government? A. I did.

Q. Was it well known to the officials of the Government that you had denounced the action of the Government? A. Every official knew it.

Q. So that from Vice-President Caro down to the lower officials they were all aware of your feeling in the matter? A. They were.

Q And nevertheless they accepted you as an Arbitrator? A. They did.

(881) Mr. Robertson suggested that all this had been already testified to by the witness on a previous occasion, and he proceeded to quote from the Minutes of the 22nd July, stating that the remarks were very nearly verbatim as compared therewith.

Mr. Stine said that in addition he wished to bring out the fact that Mr. Schramme had denounced the action of the Government at the time, and that the Government officials were aware of this, and that nevertheless they had accepted him as an Arbitrator.

Mr. Robertson stated that the Government had noth-

ing to do with the selection of Mr. Schramme, and could not control the selection. The Company had an absolute right to select its own Arbitrator.

Mr. Stine then stated that he had no more questions to ask this witness, but that he desired to call one more witness, the President of the Maritime Exchange, who was a Spanish scholar and a gentleman of very high standing, for the purpose of testifying as to the meaning of the words "*obras*" and "*trabajos*." He then sent for the witness.

In the meantime the question of where the Commission should hold its meetings was discussed. Mr. Cisneros offered the use of his office room at the Clarendon Hotel, and in view of the fact that the Commission would now hold its sittings without the attorneys the Commission decided to accept Mr. Cisneros' offer. Professor Haupt thanked Mr. Stine cordially for the use of his offices, and stated that it was a favor which the Commission fully appreciated.

Mr. ROBERTSON: In the meantime, suppose we hand in the President's cable message of September 6th. I may say that the President has sent to Mr. Cisneros a cablegram—

Mr. STINE: I object to that because it is not evidence. (882) My friend has been very insistent on having nothing except legal evidence, and he knows perfectly well that a telegram is not legal evidence.

After discussion:

The CHAIRMAN: The Chair admits that as a matter of information, we want all the data possible.

Mr. STINE: It is objected to on the ground that it is immaterial, irrelevant and incompetent; this it is no evidence at all; that we have no knowledge that a telegram ever reached the President setting forth in detail what Mr. Schramme has testified to with reference to the matter, and, furthermore, that the proper method for introducing rebutting evidence would have been either by the testimony of the President himself, or by properly issuing a Commission in which the interrogatories and cross-interrogatories were clearly set forth in order that all the facts might be brought out by the evidence before such an examining Commission.

Mr. ROBERTSON: I propose to read this and—

Mr. STINE: One moment; will you give us your telegram on which this one was sent?

Mr. ROBERTSON: No, because it contains private information.

Mr. STINE: Then I object to the whole thing as absolutely worthless. I am willing to accept all information, but without your telegram it is worthless.

After discussion:

The CHAIRMAN: Gentlemen, in all of our proceedings we have, of course, admitted anything that would throw light on these proceedings, but it has been generally in response to an admitted question or with an explanation as to the character of the information sought for. Especially was this the case in reference to the opinion of Messrs. (883) Choate and Beeman. It would seem before the answer to any inquiry or request for information be submitted to the Commission that the nature of the request calling for that answer be also submitted. It does not seem to the Chair proper to accept any information without knowing what it is in answer to; therefore, it is necessary for the Commission to hear the question. If the question can be separated from the private matter contained in the telegram the Chair will accept it, otherwise, it will be irrelevant.

Mr. ROBERTSON: Do I understand that the Chair is timid as to looking at this telegram for light.

The CHAIRMAN: Personally I have no objection to hear it, but not officially.

Mr. ROBERTSON: Do I understand that a witness who had had consultations with his counsel on certain matters could not testify on such matters, unless the private discussions with his counsel were disclosed?

The CHAIRMAN: The Chair has already ruled that, if the telegram is in such a form that the private matter can be separated, then it can go in; but, if it is not in such form, then it cannot go in.

Mr. ROBERTSON: Well, I desire to read to the Chair this message from Vice-President Caro, and—

Mr. STINE: I object; it has been ruled out.

After discussion:

Mr. Robertson read the translation of the cable message and asked that it be admitted in evidence, and Mr. Stine asked that it be excluded on the ground of its incompetency.

The CHAIRMAN: I see no reason to change my former ruling.

Mr. Robertson then asked that it be marked for identification as having been excluded by the Chair, and the Secretary marked the same.

(884) Mr. ROBERTSON: The Government understands that the Company has put in evidence under the call of the chair the minute-books of the Cauca Co. and of the Colombian Construction and Improvement Co., showing the records of the meetings of Stockholders and Directors?

The CHAIRMAN: That is so.

Mr. ROBERTSON: The Government also understands that the Company agrees that the "Diario Oficial," containing inventories of the property turned over by the Government to the Company, shall be received without further proof.

Company's counsel assented.

Mr. ROBERTSON: The Government also understands that the "Diario Oficial," containing the minutes of the Delivery of the Cauca Railroad to the Concessionary, Mr. J. L. Cherry, is in evidence.

Company's counsel assented.

Mr. ROBERTSON: The Government also understands that the report of Mr. James L. Cherry, from which the Company's counsel quoted in the cross examination of Mr. Carter, which report bears date December, 1893, is in evidence. This was denied by Mr. Stine.

After discussion:

The CHAIRMAN: Inasmuch as the report has been frequently referred to and quoted during the proceedings, it will be well to have it before the Commission.

Mr. Stine then asked permission to recall Mr. Schramme for the purpose of examining him on a point he had overlooked.

Mr. Schramme, you heard Mr. Cisneros' evidence on the question of the value of this Concession, which was granted by the Colombian Government to Mr. James L. Cherry in 1890, and by him transferred to the Cauca Co.? A. I have.

Q. What have you to say as to his information on the (885) value thereof? A. I differ with Mr. Cisneros entirely. I consider it an immensely valuable concession, because it carries the right to develop the richest valley in the world. It opens access to immense measures of true bituminous coal, which can be laid at Buenaventura at a cost of $5 per ton by the Company, freight. Coal can be mined there for 75c. per ton, and everybody knows that coal is worth $10 to $15 per ton, gold, in Panama. It

would be the only true coal deposits on the Pacific coast. There is a lignite discovery in Chili selling at the mines at from 35 | to 40 | per ton. The moment coal could be placed at Buenaventura, and steamers knew that it was a coaling station, every steamer coming North or South would buy its coal there. That alone would be an immense source of revenue. Then the immense amount of lands that the Company had a preferential right to would become valuable on account of the mineral rights, salt, coal, etc.

Q. Is it not a fact that, as this line extended, its income increased rapidly? A. It did.

Q. Did the officials of the Company make an estimate of what the income of the Company per month would have been if it had reached Cali?

Objected to by Mr. Robertson as incompetent and immaterial.

A. The estimates of the officers of the Company were that, if the Company was capitalized at, say, $3,000,000, the road would pay an interest of 10% thereon.

Q. That is hardly responsive. After the road reached Cordova, did it strike the mule track? A. That was the mule track.

Q. And did the traffic then increase enormously? A. It increased considerably after striking San Jose.

Q. That is what I mean; did the earnings then increase? A. The earnings rose from $5,000 to $6,000 to sometimes nearly $14,000 to $15,000 per month.

(886) Q. Were the rates increased? About 75%.

Q. Whereas the increase in traffic receipts was about 200%?

Objected to by Mr. Robertson, who stated that the Company could not contradict their own witnesses. They had produced Mr. Blum, who had stated that the increase of revenue was entirely due to the increase of tariff, and that there was substantially no increase of traffic.

Mr. SCHRAMME: Furthermore, the Government guaranteed 5% on $38,000 per kilometer; the distance from Cordova to Cali is about 160 kilometers. I have figured that the subsidy that the Colombian Government would have to pay to this Company would have been $6,000,000 whereas the whole road could have been built for $3,000,000.

Mr. STINE: That is all. I may say here that I do not propose to call any more witnesses.

Mr. ROBERTSON: Mr. Cisneros, will you please state

whether Mr. Schramme is right in saying that the Cauca valley contains the only good coal on the Pacific coast of South America? A. It is not so.

Q. Where is there any other coal? A. In Huaraz, Peru.

The question of the analysis of the coal then came up for discussion and Mr. Cisneros said that the Government of Peru undertook to build a railway from the Port of Chimbote to Huaraz at a cost of 24 million dollars for the purpose of bringing down the coal. Mr. Schramme stated that it was lignite containing only 45% of fixed carbon and with sulphur, whereas the Cauca coal contained 69% of fixed carbon and only a trace of sulphur.

(887) Mr. ROBERTSON: What is your opinion as to the value of Mr. Schramme's views, as expressed here, as to the profitableness of an undertaking to reach and bring coal from the Cauca Valley. Do you agree with him as to the profitableness of such an undertaking?

Mr. CISNEROS: If the capital required, which is very large, could be raised, it might be, and also if immigration were incited, but even then it is a problematical matter. I gave up that concession for nothing because I found it impossible to raise the necessary capital in the market to carry on the work.

Mr. STINE: Q. Now, Mr. Schramme, if the line had been completed to Cali, how much money would it have taken to open up the coal measures. A. About $150,000, and to communicate them with railway.

Q. In the event of opening up these coal measures, would immigration have been necessary to work them? A. It would not.

That is all.

Mr. Stine agreed that if the Government offers a cable message from President Caro with the message to which it may be a reply, it may be accepted by the Commission.

The Chairman then stated that the Commission was very much obliged to the attorneys for their laborious work in this complicated affair.

Mr. Stine and Mr. Robertson returned thanks for the courtesy shown to them throughout the proceedings, Mr. Robertson saying that he hoped that if there had been any clashing it would be taken at the result of zeal and as emanating from the head rather than from the heart.

(888) The Attorneys agreed to exchange briefs on Tuesday, the 21st.

The Commission then adjourned until a further call of the Chair, at 2:30 P. M.

(Signed) LEWIS M. HAUPT, Chairman.
MANUEL H. PENA,
Commmissioner for the Government.
C. F. SCHRAMME,
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

The Commission declares that under the circumstances, and for the purpose of its decision, neither Mr. Schramme's testimony nor the dispatches of the President of Colombia shall be considered being before it.

Approved.

(Signed.) LEWIS M. HAUPT, Chairman.

October 7th, 1897.

HAROLD R. MILLER, Secretary.

Complainant's Exhibit Number 21.

(889) Filed 17 day of Dec. 1897.

L. B. DELLICKER, Clerk C. C. U. S. D. W. Va.

COMMISSIONERS' DELIBERATIONS, DOCUMENTS AND EXHIBITS.

COLOMBIA–CAUCA COMPANY ARBITRATION COMMISSION.

Created under the Convention of 4th January, 1897.
Inaugurated April 3rd, 1897, in
New York City.

VOL. I I I.

COMMISSIONERS:

Professor LEWIS M. HAUPT, C. E.
Sr. MANUEL H. PENA, C. E.
Mr. CHRISTIAN F. SCHRAMME, Merchant.

CHAIRMAN:

Professor LEWIS M. HAUPT, C. E.

Mr. MARCUS STINE, New York, } Attorney for the Cauca Company.

Mr. FRANCISCO J. CISNEROS, New York, } Attorney for the Republic of Columbia.

RODERICK ROBERTSON, New York, } Counsel for the Republic of Colombia,

SECRETARY:

HAROLD R. MILLER.

(Copy.)

COMMISSIONERS' DELIBERATIONS, DOCUMENTS AND
(890) EXHIBITS.

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Sr. MANUEL H. PENA, C. E.
Mr. CHRISTIAN F. SCHRAMME, Merchant.

CHAIRMAN:

Professor LEWIS M. HAUPT, C. E.

Mr. MARCUS STINE, New York, } Attorney for the Cauca Company.

Mr. FRANCISCO J. CISNEROS, New York, } Attorney for the Republic of Colombia.

RODERICK ROBERTSON, New York, } Counsel for the Republic of Colombia.

SECRETARY:

HAROLD R. MILLER.

Government's Exhibit.

(891) The following is a copy and translation of the cablegram received from His Excellency the President of Colombia addressed to Mr. F. J. Cisneros, Attorney for the Government; which cablegram is referred to in the minutes of September the 10th, page 785:

Bogota, Septiembre 6, 1897.

Cisneros, New York:

No conocí Cherry. Próximo plazo fatal ley llamé Schramme, hablóme poco no tratamos detalles. Dile bases redactado por mi; consultólas Cherry, devolvióllas ligeros cambios; supe Cherry arrepintióse furioso quería retractar firma en bases. Escribí gobierno apreciaba indemnizacion proxima doscientos mil dollars porque cálculos usted detallados arrajaban algo mas doscientos mil por gastos construccion. Tuve pues en cuenta capítulos gastos estimados por cálculo Cisneros sobre construccion. Antecendentes y texto indicado revelan intencion gobierno, árbitros deben apreciar todo eso honradamente.

CARO.

No. Exhibit, Defendant's (Not Accepted). September 10, 1897. H. R. M.

Bogota, Sept. 6, 1897.

Cisneros,

New York.

I did not know Cherry. Prior to end of term set forth by the law, I called Schramme, he spoke little to me, and did not discuss details with me. I gave him the Basis (892) drawn up by myself, and he consulted with Cherry, and returned them with slight alterations. I know that Cherry regretted it furiously, and wished to withdraw his signature from Basis. I wrote the Government appraised indemnity at about $200,000, because detailed calculations of yours showed a total of something over $200,000 for cost of construction. I had, therefore, in mind, the items of expense contained in Cisneros' calculations on cost of construction. Precedents and text of Convention reveal intention of Government. Commissioners should all consider this in an honorable manner.

CARO.

The following is a copy and translation of a cablegram sent to His Excellency the President of Colombia by Mr. Cisneros and the answer from His Excellency the President of Colombia addressed to Mr. F. J. Cisneros, Attorney for the Government, which cablegram forms the subject matter of the Chairman's note at page 792 of the minutes.

New York, Septiembre 11 de 1897.

Excmo Señor Caro, Bogotá:

Presenté Comisión telegrama Vuecencia. Presidente juzga no desvirtua declaracion Schramme. Fuera gastos construccion

local ya convenidos, segun telegrama al Ministro de Hacienda en dos cientos treinta y cuatro mil pesos ($234,000) Compañia exije pago Administracion Nueva York, gastos de viaje de Schramme y Cherry, pago á este por embolso de la Concesion, cincuenta por ciento bonos vendidos, intereses bonos y suscripcion capital, cuyos importes están en cartas mias y de Peña al Ministerio. Estas son las sumas que dice Schramme que Su Excelencia entendió debian pagárseles. Deseamos saber si esa realmente fué la intencion ó pagar solo la obra local de Buenaventura como lo hemos entendido y lo dijo Peña en su protesta contra decision tercero.

CISNEROS.

I presented Your Excellency's telegram to the Commission. Chairman considers it does not contradict Schramme's statements. Over and above local construction expenses already agreed on, according to my telegram to the Minister of Hacienda, at $234,000, Company demands payment of Administration expenses New York, travelling expenses Cherry and Schramme, payment to Cherry for transfer of Concession, 50% of bonds sold, interest on bonds and stock, amounts of which are set forth in mine and Pena's letters to the Minister. These are the amounts that Schramme states Your Excellency understood were to be paid the Company. We wish to know if this was really your intention, or to pay only the local work at Buenaventura as we understood it and as Pena stated in his protest against Chairman's opinion.

CISNEROS.

Bogota, September 18th, 1897.

Received at 854 Broadway—Morton House. September 19th, 1897.

Cisneros, New York:

Yo no acepté ni rechacé á Schramme partidas tales ó cuales porque él no me presentó cuentas ni hablamos nada de eso, como he dicho; dile póliza él devolvióla ligeras enmiendas discusion; no sé como entendióla. Interpretacion que ahora le da sorpréndeme. Mi intencion quedó claramente expresada en obras y trabajos. Por primera vez oigo ahora hablar precio traspaso Contrato, intereses Capital, viajes á Europa. Por conducto McKinney habian reclamado antes costo viajes á Colombia por cuya suma y negámoslo. McKinney ofreció arreglarianse por seiscientos mil dollars advirtiéndo libros arrojaban gasto cerca ochocientos y rechazóse. Sabiendo esto dije Convenio apreciaba

(894) indemnizacion próximo doscientos. Si razones tan claras y sinceras nada valen, juzgo inútil volver hablar.

CARO.

Bogota, September 18th, 1897.

Cisneros,

New York.

I neither accepted nor rejected with Schramme items of any kind because he presented no accounts nor did we talk about that. As I have said, I gave him draft, he returned it with slight alterations, I don't know how he interpreted the discussion. Interpretation he gives it now surprises me. My intention was clearly expressed in *obras y trabajos*. For the first time I hear now of cost of transfer Concession, interest on capital, traveling expenses Europe. Through McKinney they claimed before traveling expenses Colombia for small amount and we refused it. McKinney offered settlement for six hundred thousand dollars, stating that books showed an expense of nearly eight hundred and we rejected it. Knowing this I said in Convention that we appreciated indemnity at nearly two hundred. If such clear and sincere reasons are worth nothing, I consider it useless to say anything further.

CARO.

Thirtieth Session.

(895) Held at the Army Building, 39 Whitehall Street, New York City, on the 12th of October, 1897, at 11 a. m.

Present—Professor Lewis M Haupt, Chairman; Mr. Manuel H. Pena, Mr. Christian F. Schramme, and the Secretary.

The Chairman called the Meeting to order at 11 a. m., and addressed the Commission as follows:

GENTLEMEN—the time for our Meeting having arrived, your Chairman will state that more than a month has elapsed since our last Session in consequence of the delays arising from the preparation of our proceedings and the printing thereof, and also on account of the preparations of the briefs, so that we have been unable to hold a meeting until to-day. The object of this meeting is to consider the subject matter submitted to us, and to prepare and make up our report. We should, I think, realize that we are here in a spirit of amity, and that we are to consider fairly all the questions that have been submitted to us with

the lucid and extensive testimony which forms a part of our proceedings. We are to endeavor to arrive at some result which will have the approval of all just persons. With this end in view I will ask my co-Commissioners whether they have anything to submit or propose at this juncture. Mr. Pena, have you any views to express?

Mr. PENA: Yes, I have something to say before we begin. I wish to settle the point of the legality of the extension in 1892 of the original contract. I wish to call a lawyer who understands the laws of Colombia in order that he may testify what his opinion is on that point, and I beg to move that Mr. Carlos Calderon, as a Columbian lawyer, should be called before us and let us know what he thinks.

(896) The CHAIRMAN: In reply to that the Chairman will suggest that the subject matter submitted to us for arbitration under the agreement of January, 1897, which would seem to eliminate all previous questions, has only one intent; that is, to determine the amount of money which the Government shall pay to the Company for the construction work done during the time the enterprise was in its charge. It does not seem to me that the question you have submitted is relative to that, nor does it affect the value of the road. If we stop to consider the legality and pass upon the laws or operations of the Government, then we should be proceeding beyond the limits of our Convention, and we should be assuming an authority that has not been relegated to this Commission.

Mr. SCHRAMME: I fully concur with the opinion of our worthy Chairman.

Mr. PENA: I will say that it is relative inasmuch as we are going to fix certain items of the claim, and we are specially to consider the transfer of the Concession, that certainly may be affected if the extension is not valid, because the transfer in that case would be a different amount of money.

Mr. SCHRAMME: Will Mr. Pena be good enough to explain how the transfer could be affected by it?

Mr. PENA: Because, if the concession was ended in the four years, at the end of 1894 there was no concession at all, legally speaking. Hence, if we are going to estimate what the concession was worth at the 4th of January, 1897, as it did not exist at the time the Convention was made, it could have very little value.

Mr. SCHRAMME: In the first place, the *proroga* expired in November, 1896, so that, even if it were ever so valid, the time had expired at the time the Convention was entered into, and the legality of the extension could not,

therefore, affect the value of the concession. I maintain that the concession did not expire even under a declaration of forfeiture, and not until such forfeiture had been passed upon by a Board of Arbitration in accordance with Article (897) 37 of the Contract. All that was nullified by the Convention of January 4th, 1897.

Mr. PENA: I would point out that the settlement of this business was begun at the end of '95 or beginning of 1896, and you could not say at that time that the Concession was in existence.

Mr. SCHRYMME: All proceedings were stopped by the Convention, which was for the purpose of arriving at an amicable settlement of all differences. The legality of the extension cannot affect the value of anything to appraised under the Convention.

Mr. PENA: I don't know. If I take a contract to build a house, and instead of having one year to build it in, I have only one month, my contract, being an impossible one to carry out, is practically worthless.

The CHAIRMAN: We have really no jurisdiction over the question as to the legality or illegality of the extension, or over the acts of the Government, and inasmuch as the Concession was made and all the conditions precedent to its application were agreed upon prior to the date of the passage of the Law of Caducation, it could not be as it were *ex post facto*, and hence, could not affect the decision on the question submitted to us for arbitration. The Chair's ruling will, therefore, be that it is not a question which we can take up for consideration.

Mr. Schramme agreed and Mr. Pena dissented.

Mr. SCHRAMME: We had proposed to send in a rejoinder to the brief of the Government, and have delayed sending in such rejoinder because it has been suggested to have eliminated from the brief certain portions which, I understand, has been done in the brief submitted to our worthy Chairman, and of which, I beg to state, I have not yet received a copy. When I get it, and after perusal, we will reserve the right to put in a rejoinder should we still deem it necessary.

The Chairman handed Mr. Schramme a copy of the Government's brief.

The CHAIRMAN: I will state that a messenger has just handed me a paper from Mr. Stine, which, I presume, is the rejoinder.

(898) Mr. SCHRAMME: I propose to leave it in abeyance

in the mean time. A copy has at the same time been forwarded to Mr. Cisneros.

It was decided to leave the rejoinder on the table for future discussion.

The CHAIRMAN: Is there any other point that you wish to submit for consideration, gentlemen?

No further motion being advanced, the Chairman addressed the Commission as follows:

In the absence of any further motion, the Chair will take the liberty of submitting a draft of report, which he has prepared, and which he hopes will serve as a basis for final action. It is not necessary to say that he has given this much earnest consideration, studying the minutes of the sessions with a view to reach what he considers a perfectly just conclusion. This is addressed to my co-Commissioners Messrs. Manuel H. Pena and Christian F. Schramme.

The Chairman then read the preliminary report, as follows;

New York, October , 1897.

MESSRS. MANUEL H. PENA, } Commissioners Colombia
CHRISTIAN H. SCHRAMME, } Cauca Arbitration.

Gentlemen:

INTRODUCTORY.

The taking of testimony in this cause having now closed the Chairman has the honor to submit the following opinion as the basis of further proceedings, having in view the determination of a final award, trusting it may lead to a simple and satisfactory termination of the controversy.

Realizing that all pending difficulties were compromised and set aside by the Convention of 1897, and that the Commission has no jurisdiction over the events leading up to this friendly argument, with a view of determining which party was at fault, if either. Neither is necessary to consider and treat this adjudication as a question of damages for which the rule is to be applied, but solely to (899) ascertain what the Company has expended in carrying on the operations of constructing the Ferrocarril del Cauca, for which the Company has agreed to reimburse or indemnify it.

THE ISSUE.

A careful reading of the Convention of January 4, 1897,

authorizing this Commission and defining its duties would seem to present no special difficulties as to its purport and scope, yet it was evident at an early stage of the proceedings that there existed a serious difference of opinion as to its meaning—the Government, on the one hand, claiming that the indemnity was to cover only the cost of constructing the physical work and its equivalent *in loco*, the Company, on the other hand, maintaining that it was clearly understood and intended that all legitimate legitimate expenses of the enterprise were to be reimbursed.

The Chairman's Ruling.

Hence it became necessary for the Chair to submit a ruling on the scope of the Convention as early as the third meeting, held May 24th. This ruling was accepted immediately by the Company, and the meeting adjourned to give the Government time to consider it.

At the subsequent meeting, held June 1st, the Government accepted the opinion up to the paragraph explaining the meaning of the phrase, "legitimate and necessary expenses," which paragraph the Chair withdrew June 21, hoping thus to bring the parties into substantial accord.

The Contention Continues.

This was not entirely successful, however, as it appeared throughout the subsequent proceeding that the contention as to the scope of the indemnity pervaded the minds of the parties at issue, and it became necessary to resort to additional expert opinions from well-known and learned jurists, linguists, scholars and professors to aid in interpreting the true intent of the Convention. It is, therefore, (900) necessary to devote some further space to the consideration of this fundamental question, and to make a careful analysis of this testimony to ascertain what was in the minds of the contracting parties at the date of signing the Convention.

References to Res Gestæ to Interpret Scope of Convention.

In view of the before-mentioned contention, it becomes indispensable to revert to the preliminary conferences, papers and instructions, of which the Convention is the product, to ascertain what it was for which the indemnity was to be paid.

An examination of the agreement as a whole indicates that the franchises and privileges granted to the Cauca Company by the contract of August 27, 1890, designated

as "Contract Number 20," Granting the Privileges for the Construction and Operation of a Steam Railroad, etc., were to be abrogated, and the works, franchises and concessions were to revert to the Government for a just indemnity, to be paid in cash.

This is more specifically set forth in Article II, which states explicitly that the Company is to surrender absolutely the concession referred to in Article I of the Contract approved by Law 16 of the year 1890, and to deliver the Cauca Railway and all its appurtenances within fifteen days after the approval of the agreement. As a consideration for the above absolute surrender and delivery of all its right, title and interest, the Government agrees to pay a just indemnity, in accordance with the general laws of just governments that "when private property is required for public use, indemnity shall be given by the public to the owner." Referring now to these previous documents, we find that Article I of Contract Number 20, which is identical with Article I of Law Number 16, grants to the Concessionary "The exclusive privilege to construct and operate a steam railway" covering an extensive territory, and the remaining articles also include other valuable franchises, all of which are surrendered by the stipulations of Article II of this Convention.

EXTENT OF POWER GRANTED BY THE GOVERNMENT.

(901) Law 41 of 1896 states in Article I., "Full and complete authority is given to the Executive power to settle in an equitable manner all questions and differences arising, etc.," or, according to the Government translation, "The Executive is hereby fully empowered to equitably compromise with the grantee of the railroad, etc.," thus conferring unlimited authority upon the Executive to conclude an "*equitable compromise*."

This law also states in Article I. that "The special condition of the friendly settlement" (that is the "equitable compromise" above referred to) "shall be the renunciation on the part of the grantee or his representative of the franchise granted and the consequent and immediate delivery of the railroad and all its fixed and rolling stock, buildings, tools and other appurtenances."

This same thought is carried into Article II. of the Convention in almost these identical words, and it is thus clearly shown that the intention of the Government was to recover the *franchise* as the one special condition, and thus secure as a necessary *consequence* the control of the railroad, with the material and plant pertaining thereto, for

all of which it agrees to indemnify the Company. It answers completely the contention that the franchise was to be surrendered as a gratuity whilst the Government was to pay only for the actual physical work done locally, which has been so ably advocated by counsel for the Government throughout these proceedings.

Powers Granted the Representatives of the Cauca Company.

The Commissioners from the Cauca Company was duly empowered likewise to settle, but were also instructed and limited by those whom they represented by formal resolutions adopted October 2, 1896, to-wit: They were "not to agree to nor accept any conditions in the case of sale or transfer of Contract Number 20 that shall grant to this (902) Company cash or good security satisfactory to them of a less value than a sum representing the total cash investments of the stockholders and bondholders of the Company, and the indebtedness of this Company to James L. Cherry and all salaries, cost of supplies and materials and other liabilities, unliquidated at the date of such settlement, unless authority is given by resolution of the Directors of this Company (C. C. & I. Co.), approved by the Cauca Company, to accept a less sum in liquidation of the claim of its shareholders." On October 16, 1895, or before the representative of the Cauca Company could reach Bogota, the Republic of Columbia passed a resolution forfeiting the concession, and on January 23, 1896, the Ministry suspended the law of caducation, and stated that should Congress refuse to authorize the Government to act in the proposed friendly agreement or the Cauca Co. decline to accept such terms as Congress might grant to the Government for a settlement, then arbitration should be resorted to, in conformity to Art. 37 of Contrat No. 20.

Summary of Events Leading up to the Convention of Januare 4, 1897.

Further, the representatives of the Cauca Co. arrived in Bogota Aug. 2, 1896, and found, as stated in the record, that the House of Representatives had already passed a bill directing the President to seize the road and to sue the Cauca Company in the Colombian courts for damages for non-fulfillment of the contract. The intervention of the Secretary of State of the United States was invoked to stay proceedings until the representatives of the Company could have time to reach Bogota, when the United States Minister was requested to adjust the matter in a friendly

manner. The attempts to negotiate through the Minister of Hacienda proved a failure, and his resignation was requested in consequence, so that negotiations were continued with the President. A preliminary contract was entered into between the President and Mr. Schramme, which was (903) subsequently ratified by the Minister of Hacienda, afterwards appointed. This Basis of Agreement, signed in Bogota Nov. 27, 1896, recited in Article II., as follows:

"Las dos partes convienen en reconocer de antemano como justa indemnizacion una suma que equivalga á lo que la Compania compruebe haber costeado en los trabajos ejecutados por ella en la construccion de la expresada via ferrea."

"Both parties agree to recognize in advance as a just indemnity a sum which is equivalent to that which the Company shall prove to have expended in the the works executed by it in the construction of the aforesaid railway."

And this idea was carried into the Convention in Article III., which has been translated in a variety of ways by different witnesses.

OPINIONS UPON TECHNICAL TERMS IN THE CONVENTION.

So far as the Cauca Company is concerned, therefore, their idea as expressed in the English language was from the first to sell or release their concession for actual cost to them so that they might be recouped for all legitimate expenses. When this idea was translated in Spanish the terms "*trabajos y obras*" were excepted as being synonymous with enterprise, intending thereby to cover all works and labor of whatever kind (See Articles II., III., V., X., where the same terms are used to express the claim and the indemnity to be paid), and it was to ascertain the full scope and meaning of these terms in the original language that your Chairman submitted the question to disinterested parties familiar with their technical uses.

USUAL MEANING OF "TRABAJOS Y OBRAS" IN ENGINEERING WORKS.

All the engineers referred to agreed entirely on this point, and it should be noted that the first two of them were selected at the suggestion of the representatives of the Columbian Government.

(904) Commander A. G. Menocal, C. E., U. S. N., says: "If the Company is to be reimbursed for the actual expenses incurred in the '*trabajos y obras*' of the road, the sum so paid should include the cost of all labor and materials em-

ployed in the works, together with the cost of administration, such as official salaries, clerk hire, engineers and other employees necessary and actually applied to the construction of the railroad."

Senor Del Monte, C. E., says: "In a word, to the works should be charged the ordinary expenses relating to the laborers, directors of the work and materials, and, besides, those that appertain to its management as well as the judicial and legal disbursements, but not the expenses that refer to the issuance of loans, bonds, etc., for building the road."

Mr. Jno. S. Elliott, C. E., says: "The verb *costear* means to bear all charges, pay all expenses, and invariably refers to all expenses. *Trabajos* means work in full—everything completed—when it is spoken of as *los trabajos*. *Obras* is the same as *auvre*, meaning a specific piece of work. It is hardly necessary to point out that administration charges, office rent, clerk hire, attorney's fees, etc., in New York or any other foreign place, should be distributed over the various expenses and form part of the same as much as the pay-rolls of the various gangs. Of course, I refer to legitimate expenses."

Professor Amy, a witness for the Government, in answer to a question by Mr. Robertson as to the meaning of the words "*trabajos y obras*" as contained in the Convention, replies "I have written it—I see it has been translated as 'works of all kinds done;' instead of that, it should be 'works of construction.' That would be the correct expression."

Mr. ROBERTSON (Counsel for the Government) has said:

Q. So, then, it would be necessary to ascertain first just what the actual expenses of the construction were and then confine the indemnity to those direct expenses of con-(905) struction? A. Everything strictly relating to this work; that is what is understood by *obras y trabajos*—the direct engineering work, the intellectual part of it, the direction of the material part of it, etc.

In his reply to the ruling of the chairman, under date of June 10th, at the seventh session, the representative of Colombia, by distinguished colleague, Mr. Pena respectfully submitted that under the convention "The Cauca Company should not be allowed to prove or receive indemnity for any items of expenditure not connected with the surveying, laying out, construction and the equipment of the Cauca Railroad."

MEANING OF "CONSTRUCTION" AS USED IN THE CONVENTION.

These and numerous other definitions indicate that the term "Construction" is used in an ambiguous manner by the parties at interest; hence it becomes imperative first to determine its meaning as used in the convention.

Mr. Robertson, in his cross examination of Mr. Ponce de Leon (a witness for the Company), asks:

Q. "Now, in what connection, according to the phrase of Art. III, is the construction referred to therein?" A. "It means simply 'to carry on as an enterprise.'"

Q. "What word is used for construction?" A. "*Construccion.*"

Q. "And the meaning of it is what?" A. "The *construccion* means making and building a railroad."

Q. "Is that what you mean by enterprise?" A. "The carrying on of it to the end; that is the meaning of it."

THE CHAIRMAN'S OPINION AS TO "CONSTRUCTION."

It is to be noted, moreover, that both the caption and preamble to the convention contain the term "construction" in reference to the contract number 20, as well as to (906) the law No. 16, of 1890. In referring to these documents, it will be seen that the caption to law 16, of 1890, ratifies the contract for what? "For the *construction* of a railroad from Buenaventura to Manizales," whilst contract No. 20 granted "The privilege of the *construction* and operation of a steam railroad between the port of Buenaventura and the city of Manizales," etc. This law and the contract included the land grants, guaranty and franchises with all their accessories; hence, the term "construction," as there used, must be understood in the broadest sense, and this same term is employed in Article I, of the convention, providing for the settlement of all differences arising out of the contract, approved by law 16, of the year 1890, "*For the construction of a railroad to Manizales.*"

As heretofore remarked—Article II. states the subject matter of the convention to be the surrender and transfer of all the rights and privileges granted under the authority of law 16, providing for the construction of the said railroad, and stipulates what consideration is to be paid for the same. Not merely for the naked, concrete, physical work done in Colombia, as has been contended, to quote Mr. Olcott's translation, "The Government of Colombia is to pay to the Company a just indemnity for all kinds of

work which the Company shall have done during the time the enterprise was in its charge"—and for materials, etc.

BASIS FOR THE CONCLUSION AS TO THE MEANING OF CONSTRUCTION.

This language is very clear and explicit, leaving, it should seem, no doubt as to the purport of the Government to justly indemnify the Company for all expenses incurred so long as the enterprise (*la empresa*) was in its charge—not in Colombia only, but everywhere. There is no restriction as to locality.

Article III. defines the "just and only indemnity," which, according to Prof. Amy (see testimony), is interpreted (907) as follows: "The Government of Colombia and the Company acknowledged beforehand as a just and only indemnity a sum which is an equivalent to that which the Company shall prove to have disbursed in the works executed by it in the *construction* of said railway, etc. The language herein used being almost identically the same as that in Law 16 and Contract 20, to which reference is made in the Convention, leaves no doubt that the word "construction," as here used, must be taken in the same sense as in the preceding documents, and it must of necessity follow that whatever was granted in the first instance as being necessary for the construction of the said railway should be redeemed in the second as a part thereof. Any other conclusion would be a denial of justice and do violence to the ordinary use of language.

Professor Amy also states in his testimony that *trabajos* means "intellectual labor, as that of engineers in charge."

Q. And that is part of the things to be paid for? A. "Certainly, without that the construction could not be made; everything necessary for the construction must be taken into account."

He further adds that *obras y trabajos* means the material works that have been performed both intellectual and physical.

Again Mr. Cisneros (Attorney for the Government), in reply to Mr. Robertson's question:

Q. "Now, state whether the words '*comprube haber costeado en las trabajos y obra ejecutados*' refers to the money expended or to the concrete or physical works, or to any kind of works in reference to these concrete works?" replies: A. "Yes, they do; the idea of executing work of this nature involves precisely technical, physical and administrative works, but (he adds) only local; when an ex-

pense is given outside of the local work, that is a question for the enterprise, and it is an entirely different thing."

With reference to the *local* limitations of the word "construction," Mr. Ponce de Leon states, "There is no-
(908) thing in the convention which limits the indemnity to any works done locally—that is, in Colombia only"—and he adds that "*obra y trabajos*" includes every kind of work. (See testimony, 23 session.) "*Obras* means every thing done, either morally, mentally, physically or materially." "*Obras* does not mean superstructure, and *trabajos* earth-work, as has been testified."

Mr STINE (Counsel for the Company), asks the witness:

Q. "Having examined the contract, is it, in your opinion, or not, the intention as expressed by that contract that all the general expenses and administration shall be paid as an indemnity to the Cauca Company?" "A. Yes; that is my opinion."

Q. "Do you think that it is expressed there clearly?" A. "Most positively, and I not only think that, having read that paper, but also because I have read the first paper, the basis of the Convention."

Q. "Do you cosider that the object and intention of the Convention was to reimburse the Cauca Company for all the legitimate expenses which it had incurred?" A. "That is my opinion based on the Convention."

Mr. OLCOTT (for the Government), also states that the indemnity was to be paid for "all kinds of work that the Company shall have done during the time the enterprise has been under its charge and for the rolling stock, etc., and he adds:

"The word *obras* refers generally to that which is the product of work or labor, mentally or physically." The same as "*œuvre*" in French.

In answer to the Chairman, Prof. Amy states: "By the construction of a road I mean the material and labor that required in order to conduct the work, and the intellect for directing the work and all expenses included for that purpose which enter into it, but nothing outside of that. I am not a railroad accountant; I have had no experience at all."

THE INDEMNITY TO BE A SALE FOR COST.

Many other witnesses have also testified that to all in-
(909) tents and purposes this Convention provides for the sale of the road and the appurtenances for cost.

CONCLUSION AS TO THE SCOPE OF THE CONVENTION.

It is manifest, therefore, that there is a substantial agreement amongst most of the witnesses on both sides as to the scope of this Convention, which they construe to include all legitimate expenses incurred in the construction of this road, using the term construction in its broad sense.

ITEMS PROPERLY CHARGEABLE TO THE COST OF CONSTRUCTION IN THIS CASE.

It only remains to determine what it has actually cost the Company to produce this result which with the Concession has been surrendered to the Government of Colombia. For this purpose we must consider all the elements which were required, under the special conditions which surrounded this enterprise, to construct the additions made to the road during the time it was in the hands of the Company, and in doing so it is manifestly impossible to separate physical from mental labor, or work in Colombia from that performed beyond its limits but accruing to its benefit, or to award salaries to subordinate officers and not also to those who have the planning and direction of the enterprise, or to affix a scale of wages or salaries different from those authorized by the legally constituted authorities, so long as they were reasonable, without doing violence to every principle of justice.

Although the Concession was liberal, it has been shown by the testimony that the Company confined its efforts exclusively to this single enterprise of "*constructing* the Ferrocarril del Cauca," and that all the moneys raised by the Company or received from the Government were devoted to the conduct of this work in some capacity, either for work and labor done, materials provided, supplies fur-
(910) nished, or for freight, dues, salaries, office, traveling and incidental expenses, and that the Company has incurred legal liabilities, the proceeds of which have been expended on the work and which therefore forms a part of the cost; but the claims of the Company as submitted contain some items which do not fall within this category, and hence in determining the just indemnity for the "construction" of this work it is necessary to analyze the account somewhat in detail.

THE GOVERNMENT'S ESTIMATE OF LOCAL COST OF PHYSICAL CONSTRUCTION ACCEPTED.

After much painstaking labor and diligent research, the representatives of the Government have prepared from the data admitted in the hearings as well as the books and

accounts submitted by the Cauca Company and from their own records, including the "Diario Official," an estimate as to the local cost of the building and equipment of the Railroad in Colombia, which was so close an approximation to the figures of the Company that it not only confirmed their accuracy, but also displayed the skill and fairness of the Attorneys and engineers of the Government. It was, therefore, suggested by Mr. Cisneros that the amount of $233,909.14 be taken as the cost of the local work and equipment, so that the necessity of a trip to Buenaventura might be avoided if approved by his Government. Mr. Robertson seconded and approved the measure, as it would leave to be determined only what the Convention meant as to "construction," and Mr. Stine, on behalf of the Cauca Company, accepted the offer without prejudice to the rights of either party, thus eliminating one of the great difficulties of the contention.

Cost of Maintenance and Operation Eliminated.

It was further mutually agreed that the expenses of conducting transportation being about equal to the receipts, they should be considered as being balanced and should not enter as an element in this Convention.

Summary of Opinion.

(911) Your Chairman has given careful consideration to the point made by the Counsel for the Government as to the meaning of the word "construction" as used in the Convention, and he has already stated his conclusion thereon in the foregoing pages, thus determining the full purport and scope of the Convention as originally understood and mutually agreed to by both of the contracting parties to be that, in contideration of the surrender of the franchises and delivery of all the material property in possession of the Company in Columbia, the Government agreed to pay to the Company the legitimate *mate* cost of producing these results during the time the enterprise was under the control of the Company.

The Legitimate Expenditures.

The Company's claim is for $962,438.74, and this does not inclue losses of moneys destroyed by the fire at Buenaventura, cost of reconstruction of bridges and repairs to old line to Cordoba, discounts on *libranzas* and the balance of guaranty due on completed road up to date of transfer. Were these items to be included they would aggregate over $1,000,000. The principal items to which objection is made by the representatives of the Government are all of

those incurred outside of the Republic, such as salaries of officials, their traveling expenses, office rent, clerks and attorneys as well as all charges for interest and the price of the concession.

For the reasons hitherto stated and for the further reason that Contract No. 20 (Article 35) distinctly authorized the concessionars to "have his domicile in any city of Europe or America that he may choose," provided he keep a representative in the City of Bogota, and inasmuch as the work could not have been conducted without a directing management entitled to adequate compensation it seems to your Chairman eminently proper and just that the salary of the President or General Manager as well as that of the (912) Secretary and Treasurer with their clerk should be allowed, as otherwise the Government would reap the results of these official services without compensation, which would be an act of confiscation not comporting with the dignity and purpose of the Republic. Moreover, had the Government ever intended to exclue this item from the indemnity it should have been distinctly expressed in the agreement, whereas it is silent on this point, leaving it to the Commission to determine as to whether the general expense of Administration should or should not be included in the cost of Construction.

The salaries "during the time the enterprise was in their charge," that is, for the period from December, 1890, to the date of surrender, to-wit, January 26, 1897, when the road was delivered, say six years and two months, aggregates $108,181.42, made up as follows:

*J. C. Cherry, Dec. 1, 1890, to Apr. 30, 1892—17 mo. at $500.		$8,500 00
" Apr. 30, '92, to Jan. '97, inclusive, 57 mo. at $1,000,		57,000 00
		$65,500 00
C. F. Schramme, Jan. 1, '91, to Apr. 30, '92—16 mo. at $300,		4,800 00
" Apr. 30, '92, to Jan. 31, '97—57 mo. at $600,		34,200 00
		$39,000 00
S. C. Schramme, during concession (as per act).....		3,681 42
Total		$108,181 42

*Died Jan. 10, 1897, and was buried in Columbia.

Whilst this item would seem to form an unusally large per centage of the total cost of the work, it should be remembered that for a large portion of the time active operations were seriously interrupted by events beyond the control of either of the contracting parties, and which it is unnecessary to relate, while at the same time the difficul-
(913) ties and responsibilities of the officers of the Company were largely increased, and it was necessary to maintain the organization and to incur other expenses and losses not embodiedin the claim. Under these circumstances and comparing the salaries of these officials with those of other railroad enterprises, your Chairman does not find them excessive nor unusual, and they are therefore allowed as a part of the legitimate cost of construction.

THE CONCESSION.

Article 34 of Law 16 of 1890, Olcott's translation, says:

"This present concession shall not be assigned to any Government or foreign nation, but may be transferred to any individual, company or corporation of a private character upon giving notice thereof to the Government of the Republic." In conformity with this authority, the Cauca Company was organized to purchase this concession, which it did for one hundred and thirty-five thousand dollars in gold, and without which neither it nor any other Company could have proceeded to construct the road. It was a necessary condition precedent, and operated as a fee to the land. The agreement to this effect was required to be recorded at the capitol of Colombia and was so recorded, so that it was well known to constitute one of the items necessarily incidental to the construction of the railway and for which the company is legally liable. A portion of this sum has already been paid, but a large balance is still due Mr. Cherry's estate. It is, therefore, a part of the cost of the work and must be entered in the award with interest at $135,000.

Interest on $135,000 from November 29, 1894 (When it became due as per agreement), and May 29, 1895, at 6%	$4,050 00
Interest on balance of $100,000 from May 29, '95, to Dec. 31, '96.....	9,533 33
Interest on loan of $500 for 2 years at 6%.	60 00
	$13,643 33

(914) TRAVELING EXPENSES.

In view of the same privilege granted in Article 35 of Contract No. 20 as to the *habitat* of the *Concessionaire* and his right to sell the franchise to a company as in Article 34, the traveling expenses of the officers of the road becomes a necessary element in their "cost of construction," and so long as it remained their enterprise this expense was properly chargeable on the books of the company as a part of the cost thereof, having been duly authorized by the directors. When it reverted to the Government, therefore, this cost remains as a necessary part of the expense of construction. Each of the trips to Bogota, as well as the one made to Europe, were required by the exigencies of the case and all were in the interest of the work. They were duly authorized by the company, while several of them were at the instance of the Government. The expenses incurred were not to be borne by the officers personally, but by the Company, and the money was circulated, in large part, in Colombia, with no direct return to the Company; hence, there would seem to be no just nor reasonable ground for the exclusion of this item from the amount of the award. The item is, therefore, included and amounts to the following total, as set forth in the accounts:

James L. Cherry, traveling expenses	$26,771 89
Christian F. Schramme, " "	2,238 99
Sidney C. Schramme, " "	375 42
	$29,386 30

COMPENSATIONS.

In the account of both Messrs. Cherry and Schramme is an item of twenty-five thousand dollars for special services in securing the settlement by arbitration, making $50,000 in all. This was in the nature of a claim for loss of time on two trips to Bogota and for special services, which claim was approved by the Board of Directors at a (915) special meeting held Feb. 15, 1897. These two trips covered a period of nearly one year, during which time these officers were under salary, and as their traveling and subsistence accounts were also paid, it places this sum in the class of a gratuity awarded to their officers by the Company for the faithful and delicate services which they had rendered and which they had richly merited, but, in the opinion of your Chairman, it does not constitute a necessary part of the expense of constructing the road and

was not in existence at the time of the signing of the Agreement and hence not subject to its conditions. It must, therefore, be rejected from the award.

[Resolved, "That $50,000 be set aside to be paid to J. L. Cherry and C. F. Schramme for their lost time and extraordinary services rendered to this Company during their two trips to Bogota in effecting the present settlement, to be equally divided between them."]

INTEREST ON STOCK AND BONDS.

Amongst the claims of the Company occur these items:

"April 3, 1897. Interest on Capital Stock paid in $250,000, from Oct. 15, 1890, to April 3, 1897—6 years, 5 months and 19 days at 6%	$ 97,041 66
"Interest on Bonds amounting to $264,500, from March 1, 1895, to April 3, 1897—4 years, 1 mo. 3 days at 6%	64,934 75
Total for interst	$ 161,976 41
Liabilities of the Cauca Company. Sold 6% bonds: Received in cash 50% and accounted for in construction, $132,250. Remainder due to Bondholders and to be paid by the Cauca Company	$ 132,250 00
Making a total of	$ 294,226 41

These items must receive consideration as a part of the claim and as throwing some light on the money actu-
(916) ally expended in the enterprise. From the accounts it appears that the full amount of the subscription to the bonds was not paid in ($7,499.98 being withheld) so that with this deduction the cash realized from the sale of the bonds was $124,750.02. This amount was paid by instalments extending over the period from April, 1892, to March, 1893, which payments are subject to interest at six per cent. from the date of payment to the time of transfer of this enterprise, viz.: Jan. 26, 1897, making the item for interest on bonds, which is a legal liability of the Co., amount to $32,333.40. This sum is, therefore, allowed as a part of the just indemnity.

The principal of this item, to-wit: $124,750.02, is merged into the construction account and hence disappears from the claim. The remainder, $132,250 of the bonds not paid in and which have not, therefore, entered into the cost of construction directly, but which would ordinarily con-

stitute a lien upon the property and assets of the Company, affecting the title of its successors, are eliminated through the liberality of the security holders in executing a release to the Company for the balance of its obligations under this head, so that the unpaid portion of the bonds, amounting to $132,250, is not authorized to be entered as a part of the indemnity to be paid.

With reference to the item of $97,041.66, being the interest on the cash subscriptions paid in on the account of capital stock, it must be said that it must be regarded purely as a speculation in which the investors took the risk of making or losing as the results might be favorable or otherwise. This view is sustained by the fact that the stock was issued at only 12½ per cent. of its face value and there was no legal or moral obligation on the part of the Company to pay any interest. The investor, as is usual in such cases, taking the risk.

Although there were $213,875 invested in stock and legitimately expended in the work of constructing the *the* railroad, there was no guaranty given that any interterest should be paid thereon by either the Company or (917) the Government and this was or should have been fully understood by the investors at the time of their purchase, so that, as it does not constitute a legal liability, it must be rejected. Thus these items of the claim amounting to nearly $300,000 and only a small part of which constitutes a legal liability on the part of the Company are reduced to the $32,333.40 interest on the paid-up bonds which, as before stated, is allowed as a just item in the indemnity to be paid by the Government.

New York Office and Sundries.

The expenses classified under the head of the New York office (see Barney's Report, Group No. 1.), amounting to $16,605.10, are allowed as pertaining to the "construction of the road." They form but a small percentage of the total, and when reduced to an annual charge are found to be exceedingly moderate.

The incidentals, as per detailed accounts, are also allowed as legitimate expenses, $5,122.48.

Thus, in reviewing all of the above items in the light of the Convention, they will be found to lie strictly within its scope as determined after a rigid anlysis by experts. The rule to admit nothing which is not a "legitimate and necessary expense incurred in the prosecution of the work, to be paid as full satisfaction for moneys actually invested," as stated in my ruling of May 24th has been rigidly applied, and it will be observed that the Government is not

"condemned to pay losses of the Company or other things over and above construction expenses," using the term "construction" in the same sense as that used in the law granting the concession, and which is the manifest and only proper manner in which it can be applied in this controversy.

These items may now be collated in the following:

SUMMARY.

In making up this statement of the just indemnity to be paid to the Company during the time the enterprise was (918) under its control, the amounts have been figured up to the date of surrender—to-wit: the 26th day of January, A. D., 1897, and they are as follows:

Local cost of construction as accepted to Oct. 31, '93	$233,909 14
Interest on same at 6%, Oct. 31, '93, to Jan 26, '97	48,668 18
Salaries, President, Treasurer and Clerk	108,181 42
Concession, purchased by the Company (cash)	135,000 00
Interest on same from Nov. 4, '94, to Jan. 26, '97	13,646 33
Traveling Expenses (to Colombia only), Cherry, C. & S. Schramme	29,386 30
Interest on bonds "paid in" to Jan. 26, '97	32,333 40
Expenses of New York Office	16,605 10
Sundries & Incidentals (See ac. F. & C. E.)	5,122 48
	$622,849 35

COST PER KILOMETER.

Thus, the actual cost of the road constructed and receipted for by the Government, on its basis of 16½ kilometers, would be $37,627.23 per kilometer, or a little less than the limit proposed by Mr. Cisneros as a basis of settlement.

CREDITS FOR THE GOVERNMENT.

But inasmuch as this Convention proposes to indemnify the Company only for the expenses incurred by it in the construction of the works while it had control, and since it is construed to be "a sale for cost," and the Company is not to receive any benefit or profit from its efforts to carry on this enterprise, it is necessary to allow a credit to the Government for the money paid by it in the form of guarantee as the work progressed, which money was expended by the Company in construction of the road.

(919) In other words, the Government is to receive a credit

for the money provided by it and which is included in the cost of construction.

It should be noted that, if the indemnity applies only to local construction, very little, if any, of this guarantee could be properly credited, as it was expended mainly in the administration of the Company.

This amounts, with interest to Jan. 25, 1897, to

BALANCE DUE JAN. 26, 1897.

Under the terms of the Convention (article X.) the Government has already paid "the sum of two hundred thousand dollars ($200,000 in gold) on account of such amount of indemnity as the Commission may fix," and which sum is therefore to be deducted from the above amount of the award, leaving the balance due the Company from the Government on Jan. 25, 1897, to be

TERMS OF PAYMENT.

Article IX. of the Convention provides that "The decision of the Commission shall be final and without appeal, and the amount of the indemnity fixed by the Commission shall be payable to the Company as provided in the following article," which states, *inter alia*: "In case such indemnity as may be fixed in conformity with this agreement shall be greater than the sum of two hundred thousand dollars ($200,000) the Government is to pay the excess at such time, in such manner, and on such terms as may be determined by the Commission."

In conformity with these stipulations, therefore, the Commission has resolved that the balance found to be due upon the conclusion of the labors of this tribunal be payable on the twenty-sixth day of January, A. D., 1898, in gold, in bills of exchange on either London or New York or both, at the option of the Government, and that in consideration of cash payment on the date aforesaid, it is agreed by the representatives of the Cauca Company that a discount of five per cent. shall be allowed. If the payment is not made, however, on the date aforesaid, then in-
(920) terest shall accrue at the rate of six per cent. per annum.

GENERAL REMARKS.

Inasmuch as Article XII. authorized the Commission to dispose of the expenses of the personnel, mobilization and plant and "decide whether such expenses are to be charged against one or both parties," it has been mutually agreed that the salary and expenses of the Chairman, experts and

secretary, as well as the cost of printing the report, exhibits, and documents in the English language, stationery and incidentals, shall be divided equally between the Government and the Company, and that all other expenses, including the compensation of both Commissioners and all counsel fees and other expenses, shall be charged to the Government.

In view of the agreement effected as to the value of the physical work in Columbia, the expenses of this adjudication have been materially reduced, and inasmuch as the Government is the sole beneficiary from the surrender of the franchise, and the award made covers only the liabilities of the Company legally contracted prior to this convention, it is deemed reasonable and just that the salary of the Commissioner, who is the responsible representative of the Company and who was duly accepted as *persona grata* on the Commission by the Government, knowing that he must of necessity be a partisan, be charged to the Government so that he may not have to render his services gratis or without hope of compensation.

The same principle should be applied to the Counsel for the Cauca Company, Mr. Marcus Stine, who has labored assiduously during these proceedings.

As to the other members of the Commission and their Counsel, there can be no question as to the value of their services, their fidelity to the cause, nor their just remuneration.

It is, therefore, recommended that Mr. C. F. Schramme's salary of six hundred dollars per month be (921) authorized to be continued as the responsible custodian of the papers, books and accounts necessary to the successful termination of this controversy from the date of the surrender of the contract to the date of payment of the final balance of the award, $7,200.

Also that the compensation of Mr. Marcus Stine, counsel for the Cauca Company, for his valuable services in presenting the claim of his client, be awarded the sum of ten thousand dollars. These amounts to be added to the balance and to form part of the indemnity to be paid by the Government, $17,200.

Concluding Remarks.

In concluding this report, your Chairman desires to add, although it may not be necessary, to those who have been present during our proceedings, that he has had but one object in view, which was and is the determination of a just and final award, which, if it be such, *ipso facto* should be satisfactory to both the contestants. It is not

what either party claimed nor desired yet it would seem to be the only legitimate conclusion to be reached after a thorough, careful and dispassionate analysis of the voluminous testimony and accounts so fully and freely submitted to the commission by both parties.

If this be true, then it should be the ultimatum and be accepted as such by the parties at issue that further complications, expenses and delays may be avoided.

Your Chairman cannot close without expressing his thanks to his colleagues for their uniform urbanity, courtesy and forbearance during the protracted and sometimes apparently irrelevant testimony, but it was his purpose to ascertain all the facts on both sides and give to each its due weight before reaching a conclusion.

Respectfully submitted,

LEWIS M. HAUPT,
Chairman.

(922) During the reading of the report the Chairman remarked that, at page 5, there was a paragraph to be omitted, inasmuch as it referred to Mr. Schramme's evidence which, it had been decided, did not form part of the record. And, at page 21, that the amount had been left in blank, as he had not been able to ascertain the exact amount in gold which the Government had paid to the Company in the shape of subsidy.

The CHAIRMAN: These, gentlemen, are the items I have the honor to present to you, and I consider it will be best to take up the points one by one and decide them.

Mr. PENA: For the moment, I would point out as a general remark, with regard to the terms of payment, I may say that they are provided for in the Convention, and we cannot alter them.

Mr. SCHRAMME: How is that?

The CHAIRMAN: I was not aware of it; it must have slipped my observation.

Mr. PENA: Certainly. The Bases provides that the payment shall be made in drafts on the custom houses of the Pacific.

Mr. SCHRAMME: But not in the Convention. The Bases was amended by me on that account.

Mr. PENA: Inasmuch as you considered the Bases and it was accepted, we must also consider it now.

Mr. Pena then read Article 9 of the Bases.

It is clear from this that the intention of the Government at the time was to pay in drafts on the custom houses.

The CHAIRMAN: If it is agreeable to both parties we can take the Bases as a ruling factor on that point. The article 9 appears, however, to have been amended in the Convention.

Mr. SCHRAMME: The Convention says that the $200,000 should be paid in cash and the balance as may be determined by the Commission.

The CHAIRMAN: Let us look at this from a practical point of view. It does not really make any difference. The Government intends to pay the amount of the award whatever it may be, and it seems to me that it is always (923) best to pay a creditor as soon as possible and get rid of the interest.

Mr. PENA: You do not know what sacrifices it may entail on our Government.

The CHAIRMAN: I wish to give the point due consideration. Suppose we take up the report. The interpretation of the Convention is the first point and I shall be glad to hear your remarks thereon.

Mr. PENA: I move that we take a little time to digest this report before taking up the discussion of this item.

The CHAIRMAN: The Chair will suggest the propriety of considering that item carefully as it is the key to the whole proceeding, and it would seem to the Chair illogical to take any other view of the scope of the Convention. I also would state that the brief of the Government barely touches on this question which has been extensively treated in the brief for the Cauca Company. The Government has taken it for granted that the scope is limited to the local work and that that view will be taken.

Mr. SCHRAMME: I may say that I am entirely in accordance with the scope of the Convention as laid down in the report

Mr. PENA: There is another thing I wish to talk about, viz.: what was the position of the Cauca Company at the time it carried out the Convention, because it has been stated that the Cauca Company has parted with all its rights. If it had nothing at the time of the Convention there could be no balance due by the Government. I do not mean that the Government has nothing to pay but I do not wish it to appear that the Government has settled with parties who were not entitled to the money.

Some discussion ensued on this point, Mr. Schramme calling attention to the Release executed by the Cauca Company, and he declared that the Company was willing and ready to execute any further document that might be suggested, in order to cover the Government in the event of

any further claim being put in at a later date to recover (924) from the Government in this same matter.

THE CHAIRMAN: If Mr. Pena finds that the interpretation which the Chair has placed upon the Convention agrees with his views, that of course disposes of a number of items formerly contested. Mr. Pena can be sure that I have admitted legal obligations only and that I have endeavored to throw out everything that there was a ghost of a chance to throw out, and Mr. Schramme knows it also.

MR. SCHRAMME: I maintain that the $233,909.14 agreed on for construction does not include in the estimate more than half of the supplies sent from New York, the balance having been charged to operation, we are certainly entitled to that. We are also entitled to interest on bonds, because if we are to return to the Government all the money we have received for subsidy we are certainly entitled to the interest due to the bondholders. There is only one way, from this point of view and that is to take our books and deduct the credit from the debits. If Mr. Pena makes up his mind as to what view he is going to take we may reduce some accounts here and there and come to some arrangement.

MR. PENA: At present I cannot say what view I may take. The Convention speaks of moneys spent. Any interest due by the Company cannot be called money spent.

MR. SCHRAMME: It is an obligation and the bondholders can sue the Company for interest. If Mr. Pena takes the view that we are to be indemnified for all that we have expended then it is only fair that we should be indemnified for all the expenses that appear in our books. What the worthy chairman proposes to allow us does not reimburse us.

THE CHAIRMAN: The Chairman considers that the amount arrived at in the report before you works out at less than $38,000 per kilometer, which was the price offered by Mr. Cisneros for the settlement. I do not think that the Co- (925) lombian Government would object to such a settlement; I know that Mr. Schramme is not at all satisfied.

MR. SCHRAMME: Certainly not. We are not reimbursed for the materials shipped from here. Half of them have been taken out and debited to operation and some items are left out altogether. Of course, on the other hand, I deem that some of the chairman's conclusions are very wise, and I have no doubt are arrived at in a rightful way after careful consideration.

Mr. Pena acquiesced as to the chairman's desire to arrive at a rightful issue.

The chairman suggested that each party prepare a

statement of his views on the items that are to be allowed, viz.: what particular group of the claim is to be considered, and that the same be submitted at the next meeting.

Mr. Pera suggested that each point be taken under consideration separately.

Mr. Schramme said that the whole report would be all right if the question of guaranty was left out. It had been agreed according to the stipulations that the receipts of the road from every source were not to be taken into consideration.

The CHAIRMAN: I did not understand that. I took it only for the operation.

Mr. SCHRAMME: You have not allowed us anything for the repairs of the road.

The CHAIRMAN: If I have not, we must take it into consideration; that is the object of this meeting, to determine the items to be taken into consideration. It is not too late to correct anything.

Mr. SCHRAMME: Certainly, quite so. Then you have not allowed us the $50,000, which I certainly don't want to relinquish. As regards the liabilities for the 50% of the bonds, that I myself hardly consider we are entitled to recover for.

After some further discussion on these points the chairman said that he trusted that at the next meeting each side would have its views pretty well condensed and the Commission could get down to the formulation of the final report.

(926) The Chairman then read a letter addressed by himself to Wm. F. Shunk, C. E., and that gentleman's reply on the subject of what expenses are included in cost of construction, as follows:

Phila., September 11, 1897.

Wm. F. Shunk, C. E.,
Harrisburg, Pa.:

My Dear Sir,—As I have not yet received a copy of your forthcoming report on the Inter-Continental Railways, permit me to inquire how soon this issue may be expected?

Will you kindly inform me in advance what items have been included in your estimates for the cost of construction of roads in the Southern Republic, or, to be more specific, would or would not you include the cost of administration and of general office expenses wherever such offices may be located as a part of the cost of such construction, and if any portion of said roads were to be pur-

chased by any one of the aforesaid Republics for "cost of construction," what, in your opinion, would be the proper elements which should enter into the determination of such cost?

The Nicaragua Commission is now endeavoring to secure from well-known and competent authorities, like yourself, statements as to the unit prices for materials and work done in Central America. As you doubtless have already secured a large amount of authentic data on this subject, any information you may be pleased to submit to this Commission will be thankfully received and duly appreciated.

Very respectfully yours,

L. M. HAUPT.

ADDENDA.

The accompanying extract from a letter received from the Chief Engineer of the Bureau of American Republics will serue to confirm the conclusions reached by this Commission as to the ordinary meaning of the word "construction" as applied to railroads in the Southern Republic, (927) including Colombia, and shows what items he considers just, as forming proper elements of cost, in the event of a sale of such link in the trunk line to any Government:

Harrisburg, Pa., September 21, 1897.

Dear Mr. Haupt,—Your letter of the 11th came duly to hand.

Referring to your question, my scheme of organization and instructions for the conduct of the work in Inter-Continental Surveys, approved by the Commission, prescribed that field corps should make approximate estimates at certain specified home rates in gold for grading, masonry and bridges only, and that the central office should estimate for main track, sidings, fuel and water supply, stations, shops, equipment and all other items required ior a road in running order.

The terms "all other items" should certainly include the cost of administration and of general office expenses, wherever such offices may be located. Customary precedent would add interest on the outlay during construction, and in making a preliminary estimate a percentage should be allowed for contingencies.

If a *portion* of the road were to be purchased by any Republic whose territory it traversed, the cost should, in my opinion, cover the actual expenditure for construction of road and fixed plant above noted, together with a pro-

portion of administration and office expenses, determinable by the relative expense incurred for such construction on the reach of road to be purchased. Any rolling stock transferred, of course, to be paid for at a valuation agreed on by the parties.

Yours truly,

(Signed.) WM. F. SHUNK.

Again, in the report of the Brazos River Harbor, at Velasco, Texas, are to be found, in the cost of the works, these items: incidentals, $50,327; office furniture, $1,394; artesian well, $2,656; telegraph line, $1.400; buildings, $2,322; telephone line, $135; extra construction, amounts (928) paid to G. Wilke (contractor), $271,195; legal expenses, $10,500. The total, with other items, amounts to $1,062,342.44.

There are certain other general expenses properly chargeable to the works:

Interest	$375,000 00
Receiver	27,500 00
Dart (Clerk U. S. Court)	2,000 00
Wilson (Attorney of Receivers)	11,000 00
Lee (General Manager)	20,000 00
Cost committee reorganization and general and incidental items	80,500 00
Total	$516,000 00

So that, in this case, the interest and legal and incidental expenses, which were considered to be properly chargeable to the cost of the works, amounted to very nearly fifty per cent.

It being 2:10 P. M., the meeting adjourned and it was resolved that the next meeting be held at the Clarendon Hotel on Thursday, the 14th inst., at 11 A. M.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.

Commissioner for the Company.
HAROLD R. MILLER
Secretary.

Thirty-first Session.

(929) Held at the Clarendon Hotel, New York City, on 14th October of 1897.

Pesent: Lewis Haupt, Chairman; Mr. Manuel H. Pena, Mr. Christian F. Schramme and the Secretary.

The Chairman called the meeting to order at 11:10 A. M.

The CHAIRMAN: Gentlemen, have either of you prepared your reports or proposed rejoinders and replies to the Preliminary Report of the Chair so that they can be entered on the minutes of this meeting?

Mr. PENA: I have not yet mine ready, and, therefore, I beg to move that this meeting adjourn until to-morrow in order to give me time to conclude my rejoinder.

Mr. SCHRAMME: I have only prepared a counter claim with regard to the interest and and the $50,000 compensation. My proposal will be that each Commissioner present to-morrow a report on each of the points in answer to the Chairman's preliminary report.

Mr. PENA: If I am not mistaken, the question submitted was the scope of the Convention.

The CHAIRMAN: That was the one point, but it was proposed to go into the other items as well. Of course, it will save time by taking up the general question of the Convention because everything is affected thereby. We can then take up all the points *seriatim*.

PENA: May I ask if the rejoinder to the Government's brief which was put in by Mr. Stine is before the Commission?

Mr. SCHRAMME: Mr. Stine's rejoinder has been handed to the Chairman and is under consideration of the Commission. A copy has been handed to Mr. Cisneros. I (930) shall be glad to forward you another copy if you wish it.

Mr. PENA: Thank you, I shall be obliged to you.

At 11:25 the Chairman declared the meeting adjourned until the 15th inst. at 11 A. M. at the Army Building.

(Signed.) LEWIS M. HAUPT.
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

_____,
Commissioner for the Company.

HAROLD D. MILLER,
Secretary.

Thirty-Second Session.

(931) Held at the Army Building, New York City, on the 15th October, 1897, at 11 A. M.

Present: Professor Lewis M. Haupt, Chairman; Mr. Manuel H. Pena, Mr. Christian F. Schramme and the Secretary.

The Chairman called the meeting to order at 11 A. M.

The Secretary was instructed to enter the following resolution on the record: It is resolved that the Minutes of the Meetings of the Commission shall form part of the printed record.

The Minutes of the 30th and 31st Session were taken as read and were approved.

THE CHAIRMAN: The question which was deferred from our last meeting was the consideration of the scope of the Convention which Mr. Pena asked time to consider. It is the first business before the Commission at this Meeting. We are prepared to hear from Mr. Pena on that subject.

Mr. PENA: I beg to say that I have not yet received a copy of the rejoinder that Mr. Stine has handed to the Commission and which Mr. Schramme at our last meeting kindly offered to send to me. I regret that I have not received it. I have read the rejoiner from the copy in the possession of Mr. Cisneros.

MR. SCHRAMME: The order was given to the typewriter, but the supply was exhausted and fresh copies have had to be made.

The Chairman thereupon handed Mr. Pena his copy of the rejoinder.

Mr. PENA: I must say now that as in the minutes of the last meeting Mr. Schramme said that in the preliminary report of the Chairman nothing had been allowed to the Company for repairs of track, and, at the same time, that only 50% of the materials shipped to Columbia had been taken into account in the accepted estimates for con-
(932) struction and equipment. I have asked Mr. Cisneros about this matter, and he answered me with this letter, which I now have the honor of submitting to the Commission.

Mr. SCHRAMME: I beg to suggest, Mr. Chairmain, that this is not relevant to the question now before us; it may come up later on, but the question now before us is the scope and meaning of the Convention.

Mr. CHAIRMAN: As the Chairman announced, that is the first business before the meeting. It will be better to

follow that order of procedure so that we know just where we stand.

Mr. SCHRAMME: Mr. Pena's letter would be out of order.

The CHAIRMAN: If Mr. Pena is ready to answer that part of the report which we adjourned to consider, perhaps it would be as well to take up that line at present.

Mr. SCHRAMME: I have some remarks to make on the same question myself and I had deferred them until after the consideration of the scope of the Convention which is the most important point.

The CHAIRMAN: In other words, this question is not yet before the Commission and we are reversing the order of things.

Mr. PENA: If I understand that, it is only a matter of time for me to present this document and the delay does not imply that I have no right to introduce the same before the Commission, I have no objection in presenting the paper at a later date.

The CHAIRMAN: That is quite understood and it is all right; it is simply a matter of order of procedure. The question we want to consider first is the scope of the Convention and for that we adjourned yesterday.

Mr. SCHRAMME: And also for the purpose of bringing it before the Commission I submit the following resolution:

"I move that this Commission adopts as the scope, meaning an intent of the Convention, the exhaustive opinion given by the Chairmain in his tentative report."

The CHAIRMAN: The conclusion of that portion of the report to which reference is made as to the scope of this Convention is "that it is intended to include all legitimate (933) expenses incurred in the construction of the road, using the term 'construction' in its broad sense."

Mr. PENA: Shall I read my opinion on that?

The CHAIRMAN: Certainly, the Commission has to reach some conclusion.

Mr. PENA: But I have made a reply on the subject.

The CHAIRMAN: Do you wish to place it on file as a matter of record?

Mr. PENA: No. I wish to read it now to the Commission because I have made several alterations in the text of it.

Mr. Pena then read his reply as follows, stating that copies would be forwarded to the Commission as soon as possible.

NEW YORK, October 14th, 1897.

GENTLEMEN OF THE COMMISSION:

As our Hon. Chairman has requested his fellow mem-

bers of the Commission to present their written views as to the facts covered by his preliminary report, referring to the scope of the Convention, I beg to offer the following comments thereon. But in view of the facts, that the preliminary report is long and in the English language, and that my time for a proper examination and comprehension of it has been very much limited by reason of the short recess between the meeting at which the preliminary report was submitted and our present meeting, I desire it to be understood very clearly that I reserve the right to amend, revise and add to these comments as occasion or the circumstances may justify or appear to require; and I desire it to be further understood that any failure on my part to mention or comment on any matter of importance referred to or involved in the preliminary report shall not be taken as either an acceptance or waiver of such matter, but shall be attributed to the fact that the time for examination, comprehension and comment has been very short.

With the above qualification and reservation I pro-
(934) ceed to notice the statements and conclusions of the preliminary report.

1. I agree in general with the Chairman in the view expressed in the very opening of his report, that we have "no jurisdiction over the events leading up this friendly agreement with the view of determining which party was at fault, if either," but I cannot refrain from saying that this declaration seems not to be in harmony with the ruling of the Chairman on the admission of evidence from Messrs. McKinney and Schramme; nor does it seem to be in harmony with the Chairman's appeal to "*Res Gesta*" to interpret the scope of the Convention."

In my view, the Bases of Agreement and the final Convention are very plain, and do not for a moment warrant the assumption that the parties ever contemplated any other indemnity than one which should be strictly limited to expenditures made in strict construction work and in the purchase of equipment.

While the Chairman quotes the opinion of men who were not before the Commission, and also quotes the views of Mr. Ponce de Leon, the witness of the Company, and refers to the letter of Mr. Menocal, claiming that these gentlemen concur in his views as to the scope of the Convention, I call attention to the fact that Mr. Menocal, in his sworn testimony, gave an express construction to the meaning of his letter, which is at total variance with the construction which the Chairman has placed thereon, and which is in entire accord with the views of the Govern-

ment's Representatives as to the nature of the construction and equipment expenses which are to form the aggregate of the indemnity; and I call particular attention to the fact that, while the Company called but one witness on the scope of the Convention—Mr. Ponce de Leon—who made a most unsatisfactory witness because of his apparent partiality, the Government called such eminent gentlemen as Mr. Emmett R. Olcott, Mr. Charles F. Adams, Mr. Paul Fuller, Professor F. J. Amy, Mr. Francisco Sellen and Mr. Francisco J. Cisneros, all of whom are professional gentle-
(935) men of unusual skill and deep acquaintance with the Spanish language, and all of whom hold views directly antagonistic to those of the Chairman, my fellow Commissioner Mr. Schramme and the Company's only professional witness, Mr. Ponce de Leon.

2. I notice at the foot of the second page of the preliminary report the statement that, in Art. II. of the Convention, the Government, in consideration of the absolute surrender and delivery by the Company of all its rights, etc., "agree to pay a just indemnity, in accordance with the general laws of just governments, that 'when private property is required for public use, indemnity shall be given by the public to the owner.'"

To me this construction of Article II. of the Convention seems to be at war with all the circumstances leading up to the Convention, to be wholly unjustified by anything in either the Bases of Agreement or the Convention and to be directly contrary to the intent of the latter instruments.

It seems very clear that the proper construction of Articles II. and III. of the Convention requires that Article II. should be held to mean that the parties specified that the indemnity should be a "just" one for the very purpose of making in connection with Art. III. & XXV.), that they did not contemplate a "full" indemnity. The full or completeness of an indemnity has no necessary relation to what justice may require. A "full" indemnity must cover all loss, no matter who may suffer in paying it, while a "just" indemnity is always to be governed by the particular circumstances. Where one person claims an indemnity from another it is generally easy to determine what payment or restitution would amount to a full indemnity, but it may be a very difficult matter to determine what "justice" would require one party to pay to the other, or what would, under the circumstances, constitute a "just" indemnity, for, under the circumstances of any given case, any indemnity, from 1 per cent. to 100 per cent. of the indemnity claimed, might be unquestionably "just." On the other

(936) hand, a full indemnity must be complete and cover all loss, and to direct that one pay a "full" indemnity might, in any given case, be to require him to pay a highly unjust and wholly unconscionable indemnity.

In the present case, the parties, in the III. Article of the Convention, specifically limited the indemnity and took particular care that there should be no ground for question either as to its extent or as to how it should be ascertained. Words could not be more plain. They even went so far as to say that they had agreed *in advance* that the "just" and "only" indemnity referred to should be a sum equal to the Company's expendure in construction work and in equipment. We must remember that a "just" indemnity had been referred to in the II. Article of the Convention, which makes it clear that the "just" and "only" indemnity provided for in the III. Article was the very indemnity referred to in the II. Article, and was to be specifically limited to the two classes of expenditures mentioned in said III. Article; that is, to construction expenditures and equipment expenditures. While the provisions of these articles and the sequence of the provisions make this intent very clear, it is quite evident that had the intent been to cover general, incidental or any other than construction and equipment expenses, proper language would have been employed to express each intent. It must be borne in mind that "Construction Expenses" and "Equipment Expenses" have a well-understood meaning, and it is quite inconceivable to my mind that men well acquainted with railway affairs and engaged in settling so important a matter as that of the amount which the Government should allow the Company, instead of standing on its right of forfeiture, should use such well-understood words without intending that they should be accepted in their usual sense, and in the sense in which railway experts were accustomed to use them.

It must be carefully remembered that all the parties who took part in the preparation and discussion of the the terms of the Convention were gentlemen well acquainted (937) with railway matters, and that the words "expenditure in construction and equipment" have a common, popular and technical significance.

To my mind, then, the Commission would be wholly unwarranted in holding that the Convention clothes it with any jurisdiction or power to make any valid award which shall cover or include any expenditures not truly and directly made either in construction work or in the purchase of equipment.

The Chairman seems to be of the opinion that the Gov

ernment was to pay for the surrender of the Concession. It is true that the limited indemnity specified in the III Article of the Convention, covered the surrender of the concession, the road and the equipment, but the fact that, specifically, the III. Articles provides that the indemnity shall only amount to the expenditures on construction and equipment, while the concession is named as one of the things to be surrendered, makes it most clear that the cost to the Company of the concession was not to form any part of the indemnity. To illustrate: If three things be purchased at the cost of construction of two of such things, two things are clear (1), that the particular cost of construction of the third thing can form no part of the price to be paid, and (2) that the general cost of the third thing cannot be deemed to be any part of the general cost of the the two things whose cost shall determine the price to be paid for all three. In the present case, then, the fact that the concession is one of the things to be surrendered, but not one of the measures of the indemnity, is conclusive that it was not intended that the Government should pay any indemnity on account of its surrender.

Again; The Company had undertaken to construct in four years a road which would have cost $3,000,000; it had raised from its own resources (in six years) about one-tenth of the money required to build the road, and had in such six years only constructed about one-thirteenth or less of the road which it had undertaken to build within the four years, and to do this it had to obtain subsidies from the (938) Government amounting to over $140,000, and to appropriate the surplus revenue of the constructed road which the Government had turned over to it. Under such circumstances, even were the convention doubtful on the point, which it is not, it would be but want of justice to hold that what the Company had paid to its own promotor for the concession for the peremptory construction of over 131 kilometers of road should be counted as only a small part of the cost of less than ten kilometers which the Company, with the aid of the Government's subsidies and the surplus revenue of the Government's road, had been able to construct.

If the justice of the Government's attitude prior to the convention were open for discussion, it might be pertinent to ask whether the Government is to be assumed to have had any rights at all under the concession, and, if so, what they were. In the concession it attempted to reserve the strict right of forfeiture. Had it any right to assert any claim that forfeiture had been incurred, provided it honestly entertained the view that the Company had not built

the road to Cali within the period of four years agreed upon under penalty of forfeiture? Any other party to such a contract would have had such a right. If the Government had no such right, how did it lose it, or did not the Concession reserve the right of forfeiture? If the Concession did reserve the right of forfeiture, and the Government is still supposed to have had any right to assert its claims, how could its Congress have proceeded to instruct its Executive to declare a forfeiture (so that the matter could be settled by arbitration provided for under the 37th Article of the Concession) except by passing an act or resolution of instruction? That was all that Congress did. It directed the Executive to take the one step necessary to bring about arbitration on the question of the right of forfeiture. But the Company avoided the arbitration, which it doubtless feared. It is pertinent also to ask how the Company could have avoided forfeiture, provided a rational and fair-minded commission could have been found. That ferfeiture (939) had been technicelly incurred is certain. Suppose that in an arbitration forfeiture should not have been sustained. How long would the Government have been bound to wait before bringing further forfeiture proceeding or action for damages, and how long would it have taken the Company to have become so absolutely bankrupt as to have been compelled to surrender and abandon the entire enterprise?

3. I find on page 2 of the preliminary report a statement that by Law 41 of 1896 the Colombian Congress conferred upon the Executive full power to conclude an equitable compromise.

With this I fully agree. It is not only true that the Executive was entitled and empowered to conclude a suitable compromise, but it seems equally true that he did conclude such compromise, and that by the third Article of the Convention the parties positively declared the precise and only values which should be taken into account by the Commission in fixing the amount to be paid by the Government. It is because Congress gave to the Executive such power, and because such power was fully exercised by the Executive, that I contend that this Commission has no power to go further than to ascertain just what amounts were expended on Construction and Equipment, and that it has no power to revise the clear settlement of the supposed equities which the parties settled for themselves. It language has any settled or ascertainable meaning, it is clear that the II., III. and IV. Articles of the Convention conclusively confine the indemity to a sum which shall be strictly limited to the expenditures on true and real con-

struction work and in equipment. In the Spanish text this intent is so absolutely clear that any Spanish Tribunal of Justice would hardly decide that the Convention in any manner contemplated the payment of anything aside from the technical expenditures of construction and equipment.

The argument that, because the Government was to obtain by compromise what it claimed it had the right to secure by forfeiture proceedings, it was bound to pay the (940) cost of all the surrendered items, wholly does away with the idea of compromise, and is, besides, an argument that could never be accepted by any one conversont with the Spanish language and the text. The argument also wholly ignores the very evident fact that the III. Article of the Convention should be the controlling one as to the amount and mode of measuring the indemnity. It is further quite illogical to argue that, because a certain number of articles are to be given up, the cost and value of each is to be paid, and this is more evident where a compromise is involved. It is most evident where the parties have specifically agreed, and said that the only indemnity to be paid shall be a particular one which takes no account of certain of the articles except to exclude them by non-inclusion amongst the limited number of articles which are be measures of the price to be paid for the whole.

4. I note the statement on page 2*b* of the preliminary report to the effect that the Cauca Company conferred upon its Representatives in the compromise with the Government power to compromise only upon certain terms. While the Government cannot be affected by the private instructians of the Company to its Representatives, and while no such instructions could possibly change the very plain wording of Articles II., III. and V. of the Convention, it may be asked why the Company's Representative did not use in the Convention the language which in the resolution of the directors was deemed necessary to cover the expenditures that the Company claimed to have made in its enterprise in contradistinction to those which it had made in construction and equipment? When instructing its representatives as to the extent of the indemnity, the Company used the proper and necessary language to that end. It did not say that the representatives should accept in compromise "a sum equal to what the Company shall prove to have expended in construction work and equipment," but it did say that they "should not accept a less sum than cash or good security satisfactory to them of a less value (941) than a sum representing the total cash investments of the stockholders and bondholders of their Company, and the

indebtedness of this Company to James L. Cherry, and other liabilities unliquidated at the date of such settlement."

The foregoing is the kind of language that the Company's officers and advisers used to convey the every sense which the Chairman gleans from the words "a sum equal to what the company shall prove to have expended in the construction work and for material, &c., imported for use on the railway."

How clear and intelligent the use of language by the company's officers and advisers when the intent was to express the meaning which they now seek to have given to the words of the convention which, according to the great body of intelligent experts and specialists examined at the hearing, convey an entirely different sense.

While the secret instructions of the company to its officers were couched in very clear language, and while such instructions could not affect either the Government's rights or the meaning of the convention, it may be asked why the now claimed intent of the convention was not expressed in the same language or in language of the same import. The company had once chosen the language (and had chosen it well) to express the extent of the indemnity, and if the Government really desired to pay a full and liberal indemnity, so "that the company should not lose a dollar," why did the company's representatives not follow their secret instructions and use the very words so well selected by their principal? The answer is very simple. Both Mr. Schramme and Mr. Cherry knew that no such general indemity was intended. They knew that Mr. McKinney had made a number of propositions looking to a general indemnity, and that they had all been rejected by the Government, and they knew the Government would not consent to even the most favorable of the McKinney proposals. It is very evident that the parties came to an understanding which contemplated a limited indemnity, for they chose (942) words carefully designed to specially confine it within clearly outlined bounds.

The American Minister does not understand that the Convention, as finally executed, embraced the terms which he was trying to obtain when he turned the unsettled negotiation over to Mr. Schramme, and it is clear that he does not agree with the Chairman as to the intent of the parties as gathered from the basis (which was really alike in intent with the convention in respect of the point now under discussion), for he said, on having his attention called to that paper: "The part secured here I did not understand as in the contract as it reads here: 'Both parties

agree beforehand to consider as a just indemnity an equivalent to the cost of the construction of the said railway.' That is a question was discussed very thoroughly " (Testimony, p. 274).

Again, at the same page, he reads the wording as it was as follows:

" Both parties agree beforehand to consider as a just indemnity an amount equivalent to what the company shall prove to have been expended on the work done by them in the construction of the said railway," and said, "That was not my understanding." He said that the company claimed that it should be paid for " more than the work done in the building of the road," and that he had been trying to get such greater amount (pp. 274–5).

It needs no argument whatever to show that Mr. McKinney understood this phraseology in question to convey the same meaning ascribed to it by the intelligent, cultivated and rational-minded experts and scholars who testified on behalf of the Government.

5. I note the Chairman's quotation from Commander Menocal's letter, but the chairman has apparently overlooked the fact that Commander Menocal, while on the stand, expressly qualified the terms of his letter by saying that the administration expenses, salaries, &c., &c., to which he referred were the expenses of local administration, &c.

(943) While the chairman appears to quote Commander Menocal to support the theory of the Preliminary Report, nothing can be more certain than that Commander Menocal disagrees with the chairman *in toto* as to the intent of the convention in respect to the indemnity, nor is there any doubt of Commander Menocal's great repute as an engineer of the highest ability who brings to the interpretation of the convention all the knowledge and experience of his profession and a native acquaintance with the Spanish tongue.

6. I notice that the chairman is of opinion (p. 6) that the terms of the convention in respect to the indemnity are "ambiguous," and that he quotes from Mr. Ponce de Leon to establish the true meaning. I do not see any ambiguity in the terms, nor could any fair-minded, impartial Spanish scholar.

But if the meaning is to be settled by real experts in the Spanish language, in engineering and in the law, why not follow the opinions of Messrs. Olcott, Menocal, Amy, Sellen, Fuller, Adams, Cisneros, Dougherty and Carter, who were sworn and examined as witnesses?

7. A great deal has been said about the verb "*costear*."

It is true this word means "to pay all expenses," but it must be remembered that "all the expenses" referred to in the convention were all the expenditures on construction and equipment of the railroad.

I am reluctantly forced to conclusion that the chairman had written his opinion—or by far the most vital part of it—before he had received the Government's brief.

I am confirmed in this view by the chairman's statement that counsel for the Government have not discussed the question of the scope of the convention (which I think they *have* discussed most exhaustively and, to my mind, conclusively in his brief) and by his statement that he had left a blank for the insertion of the amount of subsidy paid by the Government because he had not received the Government's final or actual figures in that respect, whereas (944) the exact amount of subsidy actually paid by the Government is repeatedly stated in the brief of the Government's counsel to have been $140,747.02 (see brief, pp. 128, 129, 167).

If in this conclusion I am in error, I shall be most happy to be corrected, for I should be greatly relieved to know that no member of the Commission had formulated and written out his opinion before hearing the arguments of counsel for the respective parties.

8. I notice (p. 11) that the chairman states that "It was further mutually agreed that the expenses of conducting transportation being about equal to the receipts, they should be considered as being balanced and should not enter as an element in this convention." I do not understand the above to be what was done, nor do I find in the minutes anything to justify any statement or inference that the Government ever agreed that the expenses and receipts should be eliminated because they were equal or about equal. It is quite true that Mr. Stine suggested that such reason be stated as the reason why such items had been eliminated, but it is equally clear that Mr. Robertson expressly refused to sanction any such statement, taking the ground that from the Government's point of view such items were not proper for consideration because under the convention they could have no bearing upon the question of indemnity. After discussion, it was agreed that the items should not be considered by the Commission, but that the record should be silent as to the reason for such elimination, which should be without prejudice to either party.

9. I notice (p. 13) what the chairman says with respect to confiscation not "comporting with the dignity" or purpose of the Republic. I mention this matter

because it is well known to all the members of the Commission that the Republic did repeatedly declare that the Concession and railway should be forfeited, and I wish to assert that in my view the Republic was not unmindful of its proper dignity nor unjust in its position. Under the Concession, the Government could have no safe protection, except by the insertion of a (945) forfeiture clause. Such clauses are almost invariably inserted in concessions, and are always inserted in such important concessions as those relating to railway construction and operation, for in such cases the concessionary takes possession of public lands, and there must be some way provided for terminating the privilege or concession in case of his failure to perform. In the present instance the concessionary was in absolute default; and, if the Republic had any rights under the concession and within its own domain, it certainly had a right to declare a forfeiture, and so prepare the necessary foundation for the arbitration provided for in the 37th article of the concession. If the Government had any rights which the defaulting Company was bound to respect, it certainly was not undignified to assert them. It is true that the Government was not anxious to forfeit the actual road and equipment, as was manifest by its repeated acts of leniency, but neither was it willing to be trifled with, nor, under the circumstances, was it willing to pay to the Company anything, except the bare cost of the construction work and equipment which it should receive. It was in no way bound to allow anything by way of compensation. It had a firm agreement for forfeiture, and forfeiture had been incurred, and no question of the dignity of the Republic was at stake. It seems somewhat remarkable that it should be asserted that the Republic was unmindful of its dignity when it directed that forfeiture proceedings should be commenced.

9. I notice (p. 20) that the chairman has figured the cost per K. (on the basis of his proposed indemnity) at $37,627,23. But to reach this figure the Chairman is compelled to adopt the unwarranted basis of 16½ K. of road as constructed by the Company, whereon the only evidence in the case shows, conclusively, that the Company really constructed but 9 K. 866 M., and the fact that the Company did not pretend to claim at the hearing that it had constructed anything more than what the Government con- (946) ceded—and what appeared by the sworn testimony, is made absolutely certain by the stipulation of August 31, 1897.

As the Company's representatives do not pretend that

the Company constructed more than 9 K. 866 M., of what relevancy is it to say that 16½ K., at a gross cost of $620,849.35, represents an average of $37,627.23 per K.? Would it not be more exact—even if startling—to say that in the Chairman's opinion it is just that the Government (inclusive of interest and counsel fees to the Company not included in the above gross amount) should pay on the basis of about $65,000 per K. instead of on the basis of $37,000 per K., although the true cost of construction was less than $23,000 per K.?

10. With respect to the award proposed by the Chairman, I wish to protest that no single item allowed by him is, in my opinion, properly allowable, except the sum of $233,909.14 (agreed upon by the parties as the cost of complete *construction* and equipment), from which sum should be deducted the $200,000 already paid by the Government and the value of the construction material (about $20,000) turned over by the Government to the Company; and yet, in the Government's estimate of cost of construction, treated as though it had been paid for by the Company,

11. Before concluding this review of some of the points of the preliminary report, which seem at once to strike the attention as being remarkable (I have not had time, in two days, to consider every item of the report with a view to a careful criticism of the whole paper), I deem it proper to call attention to what I believe to be an error on the part of the Chairman.

It appears that he has conceived the present Commission to be a court of equity instead of an expert Commission, charged with only the particular duty of finding out what the Company has paid out in construction work and for equipment. It would appear, also, that he has overlooked the fact that, by the stipulation of August 31, 1897, the parties to the controversy have agreed upon the cost of *complete* construction and *complete* equipment. In spite of the fact that (947) the parties have now agreed upon the expenditures made in *complete* construction and *complete* equipment, so eliminating every item originally in dispute, except the item of the value of the material received by the Company from the Government, he proceeds by a remarkable process of reasoning to argue that, in this particular case, items which, by ordinary rules, would never be deemed proper items of expense of construction or equipment, should be included in order to arrive at an equitable indemnity. The vice of this reasoning is twofold: (1) It is not justified by the terms of the Convention, but is diametrically opposed to the sense of that instrument, and (2) it concedes that construction and equipment expenses (al-

though of a distorted, exaggerated, and purely forced nature) can only be allowed as elements of the total sum of the intended indemnity, but at the same time ignores the plain fact that the parties have themselves, by stipulation, finally agreed upon what the Commission "shall find" as the cost *complete* construction and *complete* equipment. There can surely be no costs of construction or equipment (either normal costs, exaggerated costs or imaginary costs) which by any process of reasoning can go beyond the cost of *complete* construction and equipment, and it is certain beyond possibility of dispute that the parties have now agreed upon the cost of *complete* construction and *complete* equipment. It follows that any item of claim not found among the items embraced in the cost of these two things agreed upon by by the parties in the stipulation can only be allowed as a part of the intended indemnity on the theory that the Commission has power to include in the indemnity expenditures that have no relation to either construction or equipment. This is the very question that the Company insists shall be answered in the affirmative and which the Government insists most, under the clear provisions of the Convention, be answered in the negative. And on this point the *theory* of the Chairman is conclusive against the Company, though his conclusion is against the Government, for his only attempt at justification of the allowance of the (948) items not allowed by the Government is the assertion that such items are really, for the special purposes of this case, items of expense of construction and equipment. If he did not believe that only construction and equipment expenses were to be allowed under the Convention, he would certainly meet the situation boldly and allow the items as matter of equity irrespective of their being or not being expenses of construction or equipment. But so long as he admits that these items are only to be justified by reasoning that will include them (for the purposes of this proceeding, arranged legitimate expenses of construction or equipment), he is met and answered by the stipulation; and should he attempt to justify their allowance by urging that the Commission has power to allow items as mere matter of equity, irrespective of their relation to construction or equipment, he will be met in an equally conclusive manner by the clear terms of the Convention and by his present theory that only items which in some way can be assumed to be fair items of construction or equipment expense can be allowed as elements of the indemnity. The Chairman's position grows out of the fact that he has evidently misapprehended the meaning and relative force of the 2d, 3d and 5th articles of the Convention. The true force of these ar-

ticles is as follows: the 2nd article merely provides that some unamed indemnity (limited in the next article) shall, under the circumstances, be deemed "just" to cover whatever the Company shall surrender to the Government; the 3d article specifically limits this "just" indemnity and declares that the parties have, "beforehand"—that is, before going before any commission—agreed that such limited indemnity shall be accepted as a just and as the only indemnity which shall be allowed to cover everything to be surrendered; and the 5th article provides for the creation of a commission to fix the limited indemnity already agreed upon as a "just" one by appraising the road and its equipment and not by allowing whatever to the Commission may seem to be required by supposed equitable prin-
(949) ciples. The chairman gives to the 2d article a force which it never possessed, and deprives the third article of the only and particular function which it was designed to perform. The meaning of the two articles is the same as would be conveyed by the following language: "The Company agrees to surrender all its rights under the concession, together with the railroad and everything appertaining to it, and agrees to receive as a just, appropriate and fair indemnity therefor, a sum which shall be measured by what it shall be able to prove that it has expended in construction work and in the purchase of existing materials imported for use on the railway." So far as the fixing of the indemnity is concerned, the force of the 5th article is the same as though its intent were expressed in the following language: "The Commission shall ascertain the amount of the above agreed upon indemnity by finding out what the Company has expended on the construction work and materials alluded to; and in order to find out what expenditures have been so made, and to make the necessary appraisement, it shall examine the books and vouchers of the Company and inspect the road on the spot, and it shall have the right to examine witnesses and call experts.

If the Convention expresses any intent whatever, that intent is that the indemnity shall be specially limited to the particular expenditure of the Company on construction work and for equipment, and that the Commission shall allow nothing as indemnity except the expenditures referred to.

If the stipulation of August 31st, 1897, expresses any intent whatever, that intent is that the parties have agreed upon the cost of *complete* construction and *complete* equipment, and that the Commission is instructed and directed to find at such cost of *complete* construction and *complete* equipment the sum of $233,909.14.

If anything is now left clear, it is that the sole remaining claim on the part of the Company is the claim that the Commission should allow it as indemnity certain expenditures that, confessedly, are not expenses of either construc-
(950) tion or equipment. While the Company argues that the Convention gives the Commission jurisdiction to to allow such items, the Government denies that propositions and asserts that only expenditures in construction work and for equipment can be allowed; that the parties have settled all equities between themselves; that the Commission has no equity powers, and that the stipulation has disposed of the question of total cost of *complete* construction and of *complete* equipment.

I desire for a moment to consider the point raised on the 7th page of the Preliminary Report, which is that because the law 16 of 1890—which authorized the concession —is entitled an act "For the *Construction* of a railroad from Buenaventura to Manizales," and because the Concession itself granted "The privilege of the *Construction* and operation of a steam railroad between the port of Buenaventura and the city of Manizales," etc., etc.; and because "this law and the contract included the land grants, guarantys and franchises, with all their accessories; hence the term 'construction'" as there used must be understood in its broadest sense, and this same term is employed in Article I. of the Convention providing for the settlement of all differences arising out of the contract, approved, by law 16 of the year 1890, "*for the construction* of a railway from Buenaventura to Manizales."

If the above argument means anything, it means that when the title of an act authorizing the "construction" of a railroad, and the act itself contains, possibly, a multitude of provisions which apparently have nothing to do with construction *per se*, all these various matters must be considered as items of construction work. Thus, for instance, if an act entitled "an act to authorize the construction of a railway in the Republic of Colombia" contains provisions that the Concessionary shall pay annually a tax equal to 5% upon the net proceeds of revenue from operation, such provisions will compel all courts to consider this tax as an item of construction in any subsequent contracts or acts of the Government relating to that railroad. Aside from this
(951) fact, this seems to be a nice example of the *non sequitur* mode of argument, it would, if the argument has any force, appear to be necessary to make the title of such acts longer than the acts themselves in order to avoid the danger that some court would put upon some contract a construction which nobody ever intended it should bear.

But if the use of the word "construction" in Law 16, of 1890, requires that the broadest possible construction shall be given to the same word as found in the convention, why does not the use of the words "construction and operation of a steam railroad," found in the title of the concession, which covers a multitude of things, require that each word shall receive the broadest possible construction so that construction shall include operation and operation construction and that these construction expenses shall be identical ?

The question naturally arises whether or not any principle of eqnity or justice requires that so forced and unnatural a construction of plain language should be resorted to by a tribunal in a case between a corporalion of the United States and a South American Republic, where the effect of said construction will be to convert a purely voluntary act of magnanimity, on the part of the Republic toward the Corporation, into an instrument for the infliction of a penalty upon the Republic and the granting of intended benefits to the Corporation?

Now, although all pending differences between the Government and the Company were set aside by Article I. of the Convention, I cannot refrain under the circumstances, from calling to mind the condition of affairs in January, 1897, when the said Convention was entered into, in order to persuade one's mind of the real and actual injustice of the claims set forth by the Cauca Company.

It is said in the minutes that the company agreed to construct 131½ kilometers of railroad between Cordoba and Cali within the prescribed term of four years, commencing from the beginning of 1891. It is also stated that in Janu- (952) ary of 1897 there was only 6½ kilometers of new road constructed, 7½ kilometers repaired and some incomplete works commenced, and that all this work represented in completed road less than 10 kilometers of railway; that is to say, about one-thirteenth part of the work which the company agreed to do. It also appears from the minutes the enormous damage which the country suffered on account of this breach of contract, which made useless all the sacrifices the Government had made in the shape or subsidies, in the shape of revenue from the operation of the road, and in the shape of many other gratuitous concessions made to the company This alone, which has never been disproved, is sufficient to give the Government the right. because it is necessary to give due weight to the deception practiced on the Government by the Company, to the lost hopes of the country and to the stunting of the development of the Cauca Valley. If this matter was to

be judged on the basis of equity, the Cauca Company would be submerged.

Against this the company claimed that the Government omitted to pay sums relatively small as compared with the cost of the road, which the representative of the Government has proved to be untrue, and he has proved that on the other hand the Government paid with excessive punctuality, and even in advance.

But, even admitting these claims to be true, they are in no case justification for breach of contract, as can be ascertained from the minutes, and, even were they so, they only give rise to an advantageous claim for interest on the part of the company. This argument of the company favors the Government, inasmuch as it discloses before the Commission the true situation of the company, viz.: that, outside of a couple of hundred thousand dollars the company was able to raise on its own part, it lived on the subsidies paid to it by the Government, and, failing this resource, it collapsed. This is the inference from the fact stated by the company, that, through the stoppage of this payment, it (953) was prevented from carrying out its contract. The term fixed for the completion of the railway having expired, and the Government being persuaded that the company was unable to make one step forward, it ordered the carrying out of the condition which had been stipulated for declaring the contract cancelled, and that proceedings were commenced to recover from the company the concession and the railway. The Government, represented by the executive power, magnanimously and generously delayed the carrying out of this order, exposing itself in that way to legal censure, with a view of doing everything possible to save the company, which might be compatible with the honor of the country. Under these circumstances, the company asked for and obtained the intervention of the United States Government, aggravating thereby its situation because said appeal was a new motive for caducation. The Government agreed to the intervention which had been initiated on amicable terms and in deference to a friendly and powerful government asked and obtained from Congress (although it was in the right) a resolution authorizing it to enter into amicable arrangements. With this authorization it obviated the danger which threatened the Cauca Company. The Government extended its hand generously towards the company and expressed itself more or less as follows: "Although you have broken your contract in every respect, although you will be unable at any time to fulfill its terms, although it might take legal proceedings against

you by forfeiture and arbitration in accordance with the provisions of the original concession, although by your failure to carry out your contract and your total inability ever to carry it out you have forfeited any moral or legal right to claim that the concession is still to be considered an element of value in your hands, although you have received the surplus revenue from that portion of the road which we gave into your hands in a fully constructed condition with traffic already provided, although we have paid you in bonus and subsidies the sum of $140,000, we pass over all these things, condone your failures and forgive the injuries (954) you have done us, and, because we are desirous of pleasing a friendly Government, and are not desirous of taking tangible property from you by way of forfeiture, we say to you this: If you will save us the trouble and expense of legal proceedings which we would have to take in order to enforce the absolute forfeiture of your railway, and will amicably quit the undertaking which you have been wholly unable to carry on, and will turn over to us the property which we might take with absolute right as having been forfeited by your failure to keep your agreement, we will not pay you any losses caused by your unwise management, but we will allow you a sum equivalent to the strict and proper expenditures which you have made in actual construction work and in the importation of material used for the equipment."

Can anything more be asked for? Could the Government act more generously? Could any man ask for more?

In this way the company converted the probability of a lawsuit into an amicable arrangement without precedent. This is a true history of what has occurred. In view of these promises we are here to-day. Our mission is to respect the convention as it was carried out; not to pay one cent more than what the *obras y trabajos* were worth, not to convert a desperate enterprise for the company into a magnificent profit, because that was not the intention. This Commission has a limited jurisdiction clear, precise and defined in the contract. I rely on the honor of my fellow Commissioners that in discussing one by one the items that are to be fixed in making up the claim that we shall solely be guided by justice and shall not deviate one iota from the text of the contract, as this would nullify the efforts hitherto made to terminate amicably the pending differences.

Respectfully submitted,

MANUEL H. PENA,
Commissioner for the Government.

(955) Mr. Pena having concluded, the Chairman said:

GENTLEMEN,—We have heard this very courteous and able presentation on the part of the Commissioner for Colombia in reference to the preliminary report of the Chairman, and it is now before us for consideration. Perhaps it might be more courteous to ask my colleagues first if they have anything further to say on the subject.

Mr. SCHRAMME: I only want to say this. The report or presentation of my colleague is nothing more than a recapitulation of the brief presented by the Colombian Government. It contained a great many gross and unwarranted assertions, the consideration of which is not now before this Commission, and which can be easily refuted by the correspondent between the Cauca Company and the Government, now on file at Washington. But inasmuch as it is not really relevant to the case, I do not propose to answer the same. As to the point raised about the meaning of the Convention by the Cauca Company, now before this meeting and adopted by our Chairman, I desire to state that the Commissioners have received the full arguments and evidence during the process of this investigation, and I desire to say that each Commissioner has been able to make his deductions from said testimony, evidence, documents, and so forth, without going now into lengthy and elaborate arguments. It certainly is the only thing left for this Commission to now decide, from the evidence before it, what the intent, meaning, and scope of the Convention is to be, thereby laying the basis for the final award.

Mr. PENA: This has been precisely the object of the answer I have just read, viz.: what point of view should in my opinion be given to the Convention of the 4th January, thereby arriving at a decision as to the exact amount to be awarded to the Cauca Company.

The CHAIRMAN: Gentlemen, I may say that has been the purpose of our investigation throughout these proceedings, to arrive at the true meaning, intent and *and* purpose of this Convention, and having done so, to make an application of it to the award in this case. Mr. Pena has (956) given us a very able presentation from the standpoint of the Government, and we have in addition a large amount of evidence on the subject, all of which has been carefully digested, and we have all expressed our views as to the scope of the Convention. Mr. Pena closes his paper by requesting us to act in justice to all parties and to abide by the terms of the Convention, and this has been, and is, our intention and purpose, and I think no one will question that, He has devoted some space to the consideration of

the "equities" in the case, and seems to be under the impression that your Chairman has been governed more generally by that consideration than by the strict adherence to the literal meaning of the Covention. Your Chairman desires to state that if he had considered the equities of the case, not only the losses sustained by the Government owing to the failure of the Company to complete the road and the disappointments resulting therefrom, but also the losses sustained by the Company would have to be considered, owing to its inability to carry out its purpose and its consequent disappointment, so that there were mutual losses, which, of course, are not before us and have not been taken into the case for consideration. The Convention is also very clear on the point that it was the purpose to grant a just indemnity. From the brief of the Government (p. 71) it will be found that it is stated "it must also be carefully noted that there is no provision for a full indemnity, but merely that the indemnity shall be a just one," evidently intimating that the Company was not to receive the entire amount of its expenditure, which would have been included in the term "full indemnity," but that it is to be a limited indemnity, such as would be covered by the word "just." Your Chairman fails to understand how an indemnity can be just which does not award to the parties to be indemnified the equivalent for all moneys expended in the way that may be included in the usual and ordinary meaning of the term "indemnity," which point is so well covered in the brief of counsel for the complainant, (957) where the usual English terms and meaning are stated, taken from well-recognized authorities, and it is only therefore, in its usual and ordinary sense, that your Chairman has endeavored to apply its meaning to the Convention before us, where he believes the word "just" was inserted by way of emphasis, that there might be no doubt as to its being full, and hence, just.

It has been stated that the Chairman's position is inconsistent, inasmuch as that he has admitted evidence that refers to certain points which were not afterwards considered relevant, but this position has been explained several times during our proceedings by your Chairman as being necessary, in order that we might ascertain all the facts, and then, when the Commission came to consider the question *per se*, we might eliminate any irrelevant matter. We could not determine its value or relevancy before having heard it.

The objection has also been raised to the apparent inconsistency of the Chairman in not taking into consideration the construction of the Convention as given by the

large number of experts on behalf of the Government; but the chair thinks it will be seen, on careful reading of his report, that he has taken all such evidence into consideration, and has quoted freely from the Government witnesses, and has shown that they include in the term "construction work" or "work and labor done," not only the mere physical work performed in Colombia, but the intellectual, moral and mental work performed by any persons connected with this enterprise. Hence, his reference to the partial confiscation which might result from the omission or exclusion of compensation of managers for their time and expense in undertaking the operation of building this road.

It was, of course, not the purpose of the chair to intimate, even, that the dignity of the Colombian Government was in question by any act of confiscation, since it unquestionably had the right to forfeit the entire Concession under the original contract of 1890 for the violation of certain terms therein, and it was only to preserve the consistency (958) of this act and to call attention to the fact that having agreed to a "just indemnity" for all construction expenses, using the term broadly, that the failure to pay any portion of the legitimate expenses would be a virtual denial of justice, which it did not appear to your Chairman the Government contemplated or would recognize. The question of the right of forfeiture has been referred to at some length, but as this is not one of the points submitted to the Commission, it is probably unnecessary to refer to it further.

Reference has also been made to the instructions given by the Cauca Company to their representative in Bogota, as evidence that the Convention does not mean what the Chairman has construed it to mean. The instructions of this Company were quoted by the chair to show what was in its (the Company's) mind at the time of its entering into these negotiations, and it seems to the Chairman that the representative of the Company had no authority to depart from these instructions without the approval of the directors, and he must have accepted the terms of the Convention of the 4th January, under the impression that all these points were covered thereby. So far as the instructions go, therefore, they sustain the construction which the Chairman has put upon the meaning of this Convention.

With reference to the purpose of the Convention itself, the chair would respectfully refer to his preliminary report (page 2A), where the Law 41 of 1896 states, "the special condition of this equitable compromise is to be the surrender of the franchise granted, and the consequent and immediate delivery of the railway," showing that the franchise

was the condition precedent to the basis for the transfer, and for which a consideration was to have been paid. Moreover, it should be remembered that the franchise was not secured without expense and labor incurred on the part of the Concessionary, for which a price was agreed to be paid as mentioned in the contracts, which are matters of record before this Commission, legally forming a part of the expense to this Company necessary to the construction of the road.

(959) Mr. Pena refers also at some length to the length of road completed, which was shown by the testimony of the Government to be for work done which could be strictly classified as new construction work equivalent to K. 9.866 of completed road. The total length of track reputed to have been built by the Company and turned over to the Government was K. 16.450, as asserted by the sworn measures of the Government. This, however, is not material, but was merely used, taking this official figure as the basis for determining the cost for each kilometer, as a check upon the total amount which the Chair had figured out and respectfully submitted to this Commission as the proper amount to be awarded to the Company under this Convention.

If all the intellectual labor, materials furnished, rolling stock and plant are to be paid for by the Government, your Chairman does not see how it is possible to divide these items under the Convention and to accept part and not all, and has therefore reached the conclusion that under the terms of the Convention, strictly applied, the Company should be indemnified to the full amount of money which it has expended in the execution of this work.

This, gentlemen, is briefly the substance of the Chairman's reply to his esteemed friend Mr. Pena.

With regard to the question of balancing the expenses of operation and maintenance and the revenues, the Chair merely desires to add that it will be noted that it did no. quote the stipulation, but merely referred to it incidentallyt as the Chair did not have the minutes of the meeting con, taining the stipulations at the time of preparing the report as they were in the possession of the secretary for correction and publication. Hence it may be possible that a mistake has been made in that part of the statement. If so, it will be corrected.

Mr. PENA: I made an extensive reference with regard to the "equities;" inasmuch as this word had been quoted in the preliminary report of the Chairman. I was under the impression that the Honorable President applied it to the word 'just," but an indemnity can be just without

(960) being equitable. This is why the term "just and equitable" is used comprising the two words, each of a different meaning. I take the liberty of citing an example where this theory can be successfully applied. I may commission an individual to purchase a horse to match one already in my possession. This individual, instead of purchasing one horse, purchases two, owing to claims on the part of the seller that he would suffer loss if we sold only one of the horses without the other, because they were matched. Now, the man buys the two horses, and comes to me wants to pay for them both: In that case, if I refuse, and only for one, the payment might not be equitable, but it is certainly just, because I paid him in accordance with the instructions I had given him.

The CHAIRMAN: The Chair readily recognizes the distinction made and which he thinks he has also illustrated in the reply just given—viz., that it is always his desire to deal justly and he does not take into consideration the equities of these proceedings and he thinks, if he remembers rightly, that the only reference made to "equities" in this paper (preliminary report) is that in which he quotes the letter giving the President of Colombia authority to enter into an "equitable compromise," which, of course, the President of Colombia did in executing the Convention under which we now act.

Mr. PENA: I think that the contention, being the interpretation of the words "*construccion de las obras y trabajos*" and the Company and the Government differing as to their meaning, in quoting the testimony on the subject, the Honorable President should have quoted the testimony in favor of either side, and taken into account the number, status and circumstances of the witnesses, inasmuch as the matter was submitted to experts, and in such cases the majority and status of the witnesses is the ruling factor.

The CHAIRMAN: With reference to the suggestion just made, the Chair will merely draw attention to his report in order to show that he has quoted, not only from Mr. Ponce de Leon on the part of the complainant, but also from the testimony of Professor Amy, Mr. Cisneros, Mr. Olcott, Mr. Menocal, and has also referred to the letters from disinterested parties which (961) form a part of our proceedings, Mr. E. del Monte, Mr. Elliot and Mr. Shunk. He has given due weight to all opinions, whether disinterested or not, as to the meaning of the word "construction," and does not think that he has left anything undone in this particular which should have been done, but it is not too late to remedy anything

and he is always open to conviction. Mr. Cisneros, it is to be noted, agrees with the others, but puts a limitation on the application of the meaning, which the convention does not seem to justify.

Mr. PENA: I thought that in mentioning such testimony, inasmuch as many of the witnesses limit the meaning of the words in contention to the mere physical work of construction and place doubt upon the admission of office expenses not local, etc., the honorable chairman should also have quoted same in full, but I see and understand that he only quotes those that have testified in favor of the broad sense of the words in contention.

The CHAIRMAN: The chairman will state briefly that he did not quote the testimony "*in extenso*" as it was very voluminous and speaks for itself; he desired to give the substance of it, as he thinks he has done from both sides of the case, and begs to call attention to the fact that nearly all, if not all, of the witnesses reached the general conclusion that this was a case of "a sale of the road for cost," which would seem to make it unnecessary to go minutely into the question of which witness or witnesses limited their interpretation to the actual physical work done in Colombia, which terms are not found in the convention. There is no limitation in the convention placed upon the word construction as to whether it should be "actual" or "physical" work or any such thing.

Mr. PENA: For the very reason that construction refers only to the construction of the "of the *Obras* and *trabajas*" of the railway, and that both sides were unable to agree, experts were called in to interpet the meaning thereof, otherwise it would have been unnecessary; if the specific words "physical construction" had actually been used in the convention, no discussion would have ever occurred on the subject.

(962) The CHAIRMAN: The chairman understands that a portion of the "*obras* and *trabajos*" were executed out of Colombia, and that all of the witnesses agree that intellectual and other labor form a part of the expenses, although, on rigid cross-examination, some of them did qualify their construction of it to the work in the locality. But, as stated, there was nothing in the convention which would seem to limit the "*obras* and *trabajos*" to only work done locally. This is the conclusion your chairman has reached.

Mr. PENA: In order not to prolong this discussion, the Commissioner of the Government refers to the testimony and proofs put forward by the representative of the Government, but he wishes to state that he does not admit the

broad interpretation placed upon the words by the honorable chairman. Mr. Pena (continuing, said): I regret that I do not join issue with the honorable chairman in this principal that he has established, because this is precisely the principal of "equity," and if two parties are bound together by a contract there can be no other interpretation of the contract except that which the parties themselves wished to give to it.

The CHAIRMAN: It did not impress the Chair as a matter of equity, but simply as a matter of just interpretation under the convention. If a party has agreed to pay for a certain thing, to pay for a part of it would hardly be termed "just."

Mr. PENA: The resolution of the Company authorizing the terms of the sale of the railway was passed on the 2nd of October, 1895, and it was on the 16th of the same month that the Government of Colombia declared the Concession forfeited. The circumstances of the Company were therefore materially changed by this forfeiture, and the representatives of the Company at Bogota would have to confine themselves to the circumstances of the case. That they did depart from the instructions of the directors is perfectly clear, inasmuch as the terms are not quoted in the convention, because in contracts of this kind it is usual for a representative to quote the exact words of the authority conferring the powers on him, in order thereby to cover his responsibility. If the representatives (963) did not do this, they either had authority to depart from the instructions of the board or else they took the responsibility of doing so on themselves.

The CHAIRMAN: Perhaps Mr. Schramme can explain that.

Mr. SCHRAMME: There was a modification of the authority which allowed us to turn over the road at mere cost, and in accordance with these considerations we drew up the Convention. Article 2 of the Convention expresses that in the same words as the Resolution.

The CHAIRMAN: Then that explains the reason you did not adhere to the literal instructions.

Mr. SCHRAMME: The Government had full cognizance of the contracts between Cherry and the Cauca Company and Cherry and the C. C. & I. Co., inasmuch as these contracts were referred to in the power of attorney given by the Cauca Company to Mr. Cherry, and on which power of attorney Mr. Cherry signed the Convention.

Mr. PENA: Do you refer to the contract for the transfer of the Concessions or to the contracts made subsequently?

Mr. SCHRAMME: I refer to the contracts for the trans-

fer of the Concession to the Cauca Co. and the contract between Cherry and the said Company, both of which are in evidence.

Mr. PENA: These contracts do not refer to the points now in discussion, viz., the authority given by the Company or companies for the sale of the railway or to compromise the matter.

Mr. SCHRAMME: In the power of attorney Mr. Cherry had full power to settle for whatever he might deem fit.

Mr. PENA: That was the point I wanted to arrive at. Now, to another point. The Government has shown conclusively that the transfer of the Concession was not one of things to be appraised and paid for, and this is quite justified, because the Concession is a mere right, a spiritual right, we may say, which was generously conceded by the Government under Contract No. 20 of 1890, and in order to (964) obtain the same Mr. Cherry did not have to make any great effort, inasmuch as the Government and the Colombian people were anxious to obtain a Concessionary sufficiently responsible to construct the railroad, and for that reason they received Mr. Cherry as a redeemer, and consequently the disappointment was all the greater when both the Government and the people discovered that the enterprise would not be carried out. It would, therefore, be hard to suppose how a thing created gratuitously by the good-will of the grantee should suddenly acquire a considerable money value when it was going to be given back to the same grantee, especially as Mr. Cherry had received large sums for subsidy or guaranty which would amply repay any efforts he may have made, without taking into consideration the revenue of the road.

The CHAIRMAN: Do you wish to discuss this point, Mr. Schramme?

Mr. SCHRAMME: No, I think it unnecessary. Mr. Cherry had to pay 5 or 6 lawyers and take them to Bogota; it cost him a good deal of trouble to get the Concession from the Legislature; he was nine months there himself. To my certain knowledge, he took Rengifo, Elias, Reyes and another gentleman to Bogota, paying all expenses. He had heavy expenses to obtain the Convention.

Mr. PENA: The expenses usually incurred to obtain these Concessions do not emanate from the Concessions themselves, but from the precautions taken by the Concessionary in order to safeguard his interests. In the same way that an individual purchases real estate he has to incur expenses in order to make sure of the title of the property and draw up the proper papers. These expenses do

not increase the value of the property and are never chargeable to it.

Now with regard to the point of the measurement of the road, I beg to submit to the Commission the following letter, which at my request Mr. Cisneros wrote to me on this point.

Copies of the letter were handed to the members of the Commission, and discussion thereon was postponed for a later meeting.

(965) New York, October 14th.

Manuel H. Pena, Esq.,
City.

Dear Sir,—According to our conversation of this morning, and knowing the claim of Mr. Schramme in reference to items connected with estimates for construction, I unhesitatingly declare that he is very much mistaken, as it clearly can be demonstrated in the following manner:

In accordance with Mr. Barney's report, page 2, the expenditure on construction, equipment and other expenses applicable to the physical work of the road amounts to.....			$308,559 41
At the time this acct. was closed. Oct. 31st, 1893, there remained in the hands of Mr. Simmonds, P. 10, Barney's Report, as part of the $50,000 deposit.....		$30,000	
Cost of operation of R. R. 34 months:			
1891	$31,389		
1892	31,969		
1893 (10 months)	30,926		
	$94,284		
Half expenses Administration and shop appertaining to construction	18,721		
		75,563	
			$105,563 77
Leaving as expenditure for construction and equipment.....			$202,995 64
Estimates accepted by the company.....			233,909 14
Difference (due to rates in estimates for earthwork, conglomerate, etc., being higher, as per following statement).....			30,913 50

STATEMENT SHOWING DIFFERENCE BETWEEN PRICES ALLOWED ON GOVERNMENT ESTIMATES AND PRICES ACTUALLY PAID TO CONTRACTORS ON THE CAUCA RY.:

(966)

	Estimated Prices.		Contract Prices.	
	Rate.	Amount.	Rate.	Amount.
COMPLETION OF ROAD, K.		27,100 TO	K. 29.7	50.
Clearing:				
K. 2,650	$300	$795	$200	$530
Grading:				
5,000 Conglomerate C. Y.	2 20	12,000	1 75	8,750
1 000 Loose Rock c. y.	80	800	70	700
Clay and Gravel, 400 c. y.	40	160	30	120
Trestles:				
625 lineal feet	15	9 375	7 23	4,518
Ties:				
4,770	50	2,385	28	1,335
Difference, $9,560.65		$25,515		$15,954
CONSTRUCTION OF ROAD, K.		29,750 TO	K. 36.7	40.
Clearing:				
K. 6,990	$500	$3,495	$300	$1,998
Grading:				
Conglomerate, 30.000 c. y.	2 30	66,000	1 75	52,500
Loose Rock. 23.600 "	80	18,800	70	16,520
Earth, 20.000 "	40	8,000	30	6,000
Trestles:				
2,100 lineal feet	15	31,500	7 23	15,183
Ties:				
12,582	55	6,920	28	3,522
Difference, $38,991.14		$134,715 10		$95,723
WORK DONE EAST OF SAN JOSE.				
Clearing:				
K. 6 300	$300	$1,890	$200	$1,260
Grading:				
Conglomerate, 5,500 c. y.	2 20	12,100	1 75	9625
Loose Rock, 3,000 "	80	2,400	70	2,100
Clay, 20,420 "	40	8,168	30	6,126
Difference, $5,447		$24,558		$19,111

Total Difference, $53,988.79, equal in gold to $28,973.10.

1891, $9,560 65 at 100 per cent.
1892, $38,991.14 at 108 per cent.
1892, $5,447 at 130 per cent.

(967) The reason for Mr. Carter adopting a higher rate was to avoid unnecessary controversy on the subject, and to so expedite an understanding between the parties.

The fact that we arrived at an understanding with the Company's representatives on this point amply justifies the proceeding. I have arrived at the same conclusion by a comparison with Mr. Cherry's report of 1893 (see testimony, Cisneros' evidence).

With regard to the number of kilometers considered by the chairman in his preliminary report, it is something that I am unable to explain at all. The Cauca Company claimed 16½ kilometers and as we have proved that they only built K. 9-866, it is difficult to understand why the chairman entirely ignores the testimony on this point and adopts the Company's figures.

The award of the Chairman amounts to.....	$622,849 35
Plus Mr. Stine's fees and Mr. Schramme's salary...	17,200 00
	$640,049 35

which on K. 9.866 makes $64,907 gold per kilometer instead of the $37,627.23 per kilometer stated by the Chairman.

Moreover, if we take into consideration the expenditure of the Government with regard to the present Arbitration, I do not hesitate in saying that the disbursement of the Government will average at least $70,000 to $75,000 per kilometer.

To show the enormity of this award, I will show some instances of the cost of other railways.

Railways of the Argentine Republic.

It is a well-known fact that the construction of railways in the Argentine Republic has been a matter of unnecessarily large expenditure owing to heavy speculation and other causes; but, in spite of this, the expenditure per mile for standard-guage and well-equipped railways (and the Cauca Railway is far from being such) was, 1896, $53,161 per mile, or $32,834 per kilometer. The number of miles was 8,766, and the capital expended $466,016,879, in-
(968) cluding all financial transactions.

In 1896 there existed in the U. S. 182,605.21 miles of railway, which cost $12,107,653,637, or, reduced to kilometer rate, equals per kilometer, $41,189, of good railways with proper equipment.

Although there is no possible comparison between the

Cauca Railway and the railways of the U. S. as regards either construction or equipment, the chairman had granted an award equal to $70,000 to $75,000 per kilometer against $41,189 per kilometer in the U. S.

In the foregoing I have confined myself strictly to an examination of certain matters connected with the construction expenses, and I do not wish it to be inferred from my silence on other matters that I admit anything of what I cannot help concerning the very unwarrantable conclusions of Professor Haupt as to the scope and intent of the Convention.

Now, as to another matter, I find in Mr. Stine's latest addition to his brief a statement in substance to the effect that at one of the hearings before the Commission I made the remark: "that was the only wrong action of the Government." It is true that at one of the earliest meetings of the Commission I made such a remark, but I used the word "wrong" only in the sense of "mistake," and not in the sense of moral wrongs. What I intended to say and what I supposed at the time was, that the Government had made a mistake in procedure; that is, that it had acted hastily in declaring the forfeiture rather than wait for further developments, or taking action in the courts. My position in this respect was well-known to Mr. McKinney at Bogota, both through my personal communications to him and my writings in the press. I wish now to say, however, that when I made the remark which Mr. Stine refers to, I had not given to the concession that careful and critical consideration which I have since been able to devote to it. Since that consideration I am satisfied that the Government's only course was to (969) pass an act instructing the Executive to declare the forfeiture, for it is very clear that under the Colombian Constitution the Congress alone had power of original action having in view the termination or modification of the original Concession, and it is equally clear that Congress could only act officially by passing an act or adopting a resolution instructing the Executive to take such action. In the case in point the Congress merely directed the Executive to declare forfeiture and to bring about settlement by arbitration under Article 37 of the Concession.

I wish now, after mature consideration, to say that in my opinion the Congress did not make a mistake when it instructed the Executive to declare the forfeiture, for that was an absolutely necessary preliminary to a trial of the right to forfeit.

If you will kindly make this explanation to your fellow Commissioners, I shall be much obliged.

With respect to my letter of May 3rd, 1897, to Professor Haupt regarding the amounts received by the Company from the Colombian Government (custom houses), I beg to say that at the time of the writing thereof I had only commenced my investigations into the matters involved in the controversy, and merely gave such figures as I happened then to have at hand, but I call your attention to the fact that even in that same letter I suggested to Professor Haupt the inquiry whether not we could get the details involved from the Company's own accounts. This shows what I then said was merely tentative and not final. Upon fuller investigation, however, I ascertained the true circumstances by the facts developed in the course of the hearings, and my final conclusions are fully set forth in the Government's brief. Whatever figures have been put into the brief may be received as our final figures up to this moment. Of course, should any party to the controversy discover indisputable facts having an important bearing on these proceedings, it would be his duty to discover that fact before the Commission.

I remain, dear sir, yours truly,

F. J. CISNEROS.

(970) Mr. PENA: I only wish now to refer to one other matter, the true condition of the constructed road, in order to prove that it is amply paid for with the amount stipulated on 31st August, viz., $233,909.14. The fact is that a few months after the delivery of the road by the Company the Government made a contract in which the sum of $320,000 c. c. is allowed for repairing and putting into condition the railway from Buenaventura to San Jose. This speaks for itself.

Mr. SCHRAMME: In answer to that I will state that the certificate issued by the Government Commissioners speaks for itself, as it states distinctly the condition of the road at the time we delivered it.

Mr. PENA: I make this statement only because I wish to show that it is nothing like a railway in first-class condition like we have in the United States.

Mr. Pena having concluded his arguments, the Chairman addressed the meeting as follows:

GENTLEMEN,—The Chairman desires to record that he regrets very much indeed that we cannot agree broadly on this question of the construction of the meaning of the word "construction," because it is the key to our future deliberations with reference to the items to be legitimately allowed

in this indemnity, and unless there is any further discussion required or desired, in order that we may make the necessary progress to close up these proceedings, we will be obliged to vote on this question as it stands, on the motion which Mr. Schramme has submitted to this Commission.

The motion was then put to the Commission, viz.:

"That this Commission adopt as the scope, intent and meaning of the Convention, the exhaustive opinion given by our Chairman in his tentative report."

THE CHAIRMAN: What is your vote, Mr. Pena?
Mr. PENA: Negative.
The CHAIRMAN: What is your vote, Mr. Schramme?
Mr. SCHRAMME: Aye.
The CHAIRMAN: The Chairman regrets that he cannot agree with both parties at issue, and records his vote in (971) favor of the resolution. The motion is therefore declared carried.

It being 3:15, the Chairman declared the meeting adjourned until Monday, the 18th inst., at 11 A. M., at the Army Building.

(Signed.) LEWIS M. HAUPT,
Chairman.
MANUEL H. PENA,
Commissioner for the Government.

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Commissioner for the Company.
HAROLD R. MILLER,
[Notarial Seal.] Secretary

Thirty-third Session.

(972) Held at the Army Building, New York City, on Monday, the 18th of October, 1897, at 11 a. m.

Present—Professor Lewis M. Haupt, Chairman; Mr. Christian F. Schramme, Mr. Manuel H. Pena and the Secretary.

The chairman called the meeting to order at 11:15 a. m.

It was resolved to dispense with the reading of the minutes of the last meeting on account of their length, and

the secretary handed copies to the different members of the Commission for perusal and return.

The CHAIRMAN: Gentlemen, before proceedings with the regular order of business the chair will inquire whether there is anything in the way of new business or suggestions which either member of the Commission desires to present.

Mr. SCHRAMME: Before proceeding with the tentative report of the worthy chairman I would beg to submit a paper to the Commission.

The CHAIRMAN: Is that in the form of an argument?

Mr. SCHRAMME: Yes.

The CHAIRMAN: I presume that our better plan will be to take up the preliminary report submitted as a basis, item by item, and we can then bring up these things in regular order.

Both parties agreeing to this, the chairman said:

Having settled the first point with reference to the scope of the convention, the next matter submitted in the report will be the $233,909.14, being the amount agreed by the parties at interest under the stipulation of August 31st, 1897. What is your opinion with regard to the acceptance of this item?

Mr. PENA: I beg to submit to the Commission the following proposal: "Whereas, it has been stipulated in substance upon the record by the respective parties to this controversy that for the purpose of this controversy the (973) cost of the construction and equipment of the Cauca Railway by the Cauca Company represents the expenditure of $233,909.14. Be it, therefore, resolved, that this Commission hereby ratifies the said stipulation of the parties and accepts the said sum as the cost of actual construction and equipment of said road by the said Company.

Mr. SCHRAMME: I move a substitute for that. This Commission awards to the Cauca Company the sum of $233,909.14 as the cost of items of construction as agreed in the stipulation of 31st August, 1897.

The CHAIRMAN: Mr. Pena, can you accept that as being the substance of this agreement?

Mr. PENA: Very well; it is immaterial.

The CHAIRMAN: This substitute has been moved by Mr. Schramme and accepted by Mr. Pena and is now before you. Both parties agree to this, and therefore it is understood that the stipulation is unanimously agreed to. At the same meeting, another stipulation was agreed to, viz.: "It is hereby stipulated and agreed that the two

items in the accounts known as (1) Operation and Maintenance and (2) Revenues of the Railway derived from operation are not to be considered by the Commission as determining the questions submitted for their consideration. This stipulation shall be without prejudice of any kind on other claims or defense on their part relative to any other matter. At our last meeting I understood that Mr. Pena thought that this stipulation had not been agreed to. Am I right, Mr. Pena?

Mr. PENA: What I objected to was your statement that the reason why the stipulation was adopted was that the accounts of revenues and expenditures were balanced, whereas this was not the reason. I should like the stipulation referred to, in accordance with the objection raised by the counsel for the Government on the 31st of August, wherein he stated that the motive why such items should not be taken into consideration was not because they balanced each other, but because the Government considered (974) that the convention had nothing to do with these accounts. From this point of view I agree to the stipulation.

THE CHAIRMAN: As this matter was referred to in the letter from Mr. Cisneros to Mr. Pena, it will be proper for the Chair to state that the slight incidental reference to this matter in his preliminary report was based solely from memory, and that he stated, as he remembered the season to be, that it was because these accounts of receipts and expenditures are clearly balanced that the parties were willing to wave their consideration. On looking over the Minutes of August 31st, a copy of which he has just had handed to him, he finds that factor referred to by both Mr. Stine and Mr. Robertson as being one under consideration, and that Mr. Robertson also adds that the stipulation shall be prepared waiving the consideration of these items; "without justifying any inference that they are either conceded or deemed to be within the Convention." Under this agreement the stipulation was thus approved by the Commission, so that whether the items are or are not within the Convention as construed by the Government, it does not affect the validity of the concession, they being rejected from consideration, the only bearing we have upon the question before us is as to what amounts or items were to be considered as included in these receipts or expenditures of Operation or Maintenance as stated in the stipulation, so that we may know which items are not to be considered by this Commission. It would seem that the Chair may have fallen into an error on this point in consequence of the remarks made by the Commissioner of the Cauca Company

as to which were the items agreed to be rejected in this stipulation. The Chair's inference was that, as this stipulation reads: "The two items in the accounts were: (1) Operation and Maintenance; and (2), Revenue of the Railway derived from operation;" they are not to be considered by the Commission in determining the question submitted to the Commission for their consideration.

The Chairman's opinion was that the Revenues of the (975) Railway derived from operation included only the receipts from traffic; if he is in error in regard to this matter, then his report should be amended correspondingly; the question is one which this Commission should properly take in consideration.

MR. PENA: What I wish the Commission to bear in mind is that the stipulation shall be placed on the record as entered on the Minutes of the 31st of August without any mention being made there that they balance each other, nor that they are within the scope of the Convention, but simply that the Commission agrees that they should not take them into consideration.

CHAIRMAN: It is entirely proper, Mr. Pena, and it was the intention that this stipulation should form part of our Minutes, but, of course, we must know what items it is intended to include, otherwise we do not know where we are. That will come up in the course of the discussion. Now, upon the next item is that referring to salaries under the head of legitimate expenditures. Your Chairman has conceded that, under the construction of the Convention, in his judgment, the executive officers of the Cauca Company should be reimbursed for their services up to the date of surrender of the road—viz., January 26th, 1897—which, according to the accounts and books and Report of the Expert, amounted to $108,181.42.

MR. SCHRAMME: I move, for the purpose of discussion, that the amount of $108,181.42 being the salaries of the executive officers up to January 26th, 1897, be awarded by this Commission to the Cauca Company.

MR. PENA: The amount which it is proposed to award for salaries to the executive officers was not comprised within the scope of the Convention, nor can they be considered as legitimate expenditures referring to the construction and equipment of the Railway, inasmuch as they are expenditures appertaining to a company which had many branches of business at its disposal; therefore, it would be improper to award on one branch of the business (even if such expenses were within the Convention), all the expenses apper- (976) taining to all the branches of business that the company might undertake. If said company did not enter into

any other operations, it does not imply that it could not do so. In businesses of this kind, let us say that of a construction company engaged in the construction of many buildings, there could not be charged to any one of such buildings all the charges for business and salaries, even if the officers were only engaged in the construction of one building? In any case, the building referred to would be so heavily charged that its sale would become impossible, and hence the expenditure would be illegitimate. For this reason, the Convention did not entertain these details, because it only referred to the cost of construction and equipment solely; therefore, my vote is negative to this item. I may add that in the already awarded item for cost of construction and equipment of the railway there is an allowance of 32½% for expenses of administration and contingencies, which is a much larger porportion than is usually allowed in works of this kind; therefore, from that point of view the company would be amply reimbursed for its administration expenses. May I now ask whether there are proper vouchers for all these items? I do not find in the Report of Mr. Barney, the expert, that there exist any items to prove the payment of these salaries, and as one of the stipulations of the Convention clearly states that one of the conditions of payment on the part of the Government shall be that the company shall prove to have paid the amounts claimed, this, gentlemen, is another reason why I do not agree to the award of this item of $108,181.42.

The CHAIRMAN: In reply to Mr. Pena, my distinguished colleague, the Chair would state that of course there may be honest difference of opinion in regard to the amounts properly awarded to officers of a company for services rendered, and he has stated four distinct reasons why, in his judgment, the amount in question should not be granted. The first reason was that the concession was very broad, (977) authorizing other enterprises; on that point I desire to ask my learned friend whether there was any testimony or evidence that the company undertook any other business than that of the construction of this railway?

Mr. PENA: I do not know, neither was it the work of this Commission to ascertain whether it engaged or not in other operations; my objection refers to the impropriety of charging all the cost of Administration to one single work, if the Company was authorized to carry on several, and that in Companies of this nature it would be entirely illegitimate to charge to each work all the expenses the Company may have had since its organization, and as it is not known that the Cauca Company has canceled its Charter it is still in the position to carry out other enterprises. If

we established this principle, as soon as the Company had completed a work it could charge up to it all its organization expenses from the start, which, in itself, would be sufficient to render most profitable any concern it might take up, provided it always had to be reimbursed for "the cost of construction."

The CHAIRMAN: The chair enters into this discussion for the purpose of ascertaining whether it has made any mistake and to obtain all the facts from both sides of this question, and would respectfully suggest that, inasmuch as the Company is only to be reimbursed for the expenses during the time this enterprise was in its charge, the Chair does not see the application of the last portion of the argument; neither does it appear from the books that any other enterprise was entered into nor charges made for services outside of the business of this Corporation, so that it has been unable to see how the question of the scope of the Concession and Charter affects this question of salary in any way. He believes from the evidence that these officers have devoted their time, their health and, in one case, life to this work. With reference to the third point, the per centage of Administration expenses allowed does not cover these particular salaries, and they were distinctly excluded from the start under the impression that the Convention did not include them and that the (978) allowance of 32¾% for local administration would not include the salaries of those Executive officers whose work and residence was outside of Colombia. With reference to the adequacy of the compensation itself, your Chairman has also made inquiries and has considerable knowledge and experience of salaries for similar work and under somewhat similar conditions in this country, and has given weight to that portion of the question, and, as stated in his preliminary report, he believes the amount to be a just one. With regard to the fourth point—that is, there being no vouchers for these items—that is easily explained upon the ground that these salaries have not been paid, except possibly in part, from the resources of the Company, and remained therefore as legal liabilities for which the Company is responsible. The salaries, as recommended here, were duly authorized by regular minutes of the Board of Directors and the amounts are taken from such minutes.

Mr. PENA: I take the liberty of pointing out that Mr. Cherry died from heart disease and other causes, which I do not mention because I have no certainty about them. With regard to the 33⅓%, if the Commission were to award this item of $108,063, the cost of construction and equipment would be increased by at least 60%, which would be

a percentage I have never heard of as having been conceded in any other enterprise. All this, without agreeing to any particular sum for the item under discussion. I take pleasure in recognizing that the Hon Chairman also sees that outside of the authority in the minutes for the expenditure there is no voucher that such expenditure has been made, neither partly nor in its entirety; and as the Convention expressly stipulates that all the expenditure incurred must be proved, as these are not proved they cannot be included.

Mr. SCHRAMME: I should like to reply to that. These salaries are fully proven by the chronological entries in our books which have been under the careful examination of the expert and that this expert found the entries made in proper order and upon the authority granted by the Di (979) rectors in the minutes of the Company. Receipts were not given for the salaries inasmuch as a large portion of them are still owing to the officials, and furthermore they are not required, because salaries to higher officials are usually paid without exacting vouchers for each payment.

CHAIRMAN: As Mr. Pena calls attention to the fact that these salaries are not proven by vouchers, as he seems to be under the impression is required by our Convention, the Chair has read over Art. 5 relative to the duties of the Commission, and does not find there anything requiring the voucher to be accepted as proof for a debt which has not yet been paid. The books and accounts of the Company have been entered as proofs of the correctness of the claim; the expert has also carefully examined all these accounts and has stated that the clerical work in the books is correct and that the amounts and liquidations of each voucher are correct in form as well as in regard to the figures, and as his totals agree with those in the books, the Chair's opinion is that the entries to prove the accuracy of the claim for salaries are correctly made and the claim is properly before the Commission in legal form.

Mr. PENA: From the first session of the Commission it was agreed that all proofs should be submitted in legal form and that no other proofs should be accepted. With a superfluity of reasons it was proved by the Government that the books presented were not legal proofs, therefore, the Honorable Chairman admitted them only as a guide and means to ascertain the various items, thereby searching for the vouchers. The expert shows there was no voucher for many items and among them the one in discussion. In matters of this kind we cannot be guided by sentiment, but by indisputable facts. The fact of some of these salaries not

being paid does not exclude them from being proven. I do not consider as proof an entry in the minute book because as the Convention imperatively states that the expenses must be proven, the Company had to prove the expenses in some way, and if it could not do so, it was at its own expense.

(980) The CHAIRMAN: Whilst it is true, as the distinguished Commissioner says, in regard to the books oeing admitted as a basis, if we are not to use the information obtained from such books, all the proceedings of this commission would necessarily fail; even the award for the construction which was based in part on the books of the company and largely upon the statements of witnesses would have little woight.

The Chairman thinks that the Commission has ample evidence of the legitimacy of this claim, and he does not see how otherwise it could have been established.

Mr. SCHRAMME: It is obligatory in the Conveniion for this Commission to examine the books of the company, because Article 5 states for such purpose that to ascertain the indemnity due to this company it shall examine and consider the books of the Cauca Company at New York. The books were therefore introduced as proper evidence to show the company's expenditure and obligations, and as the testimony shows fully that these books were kept in proper order and all the items being properly proven, they must form the best evidence of the company's expenditure, inasmuch as the Government has not introduced any proof that these books were false or that their entries were improper.

Mr. PENA: The Government did not introduce proofs that the books were not properly kept because that was not under consideration. but simply to prove the entries therein, and they were, therefore, admitted as a basis of ascertaining the legitimacy of the entries. As regards whether the books were or were not properly kept, I take the liberty of stating, with the permission of the Honorable Commissioner, that they were not, because this has been admitted by the company themselves, inasmuch as they said it was impossible to separate construction from operation expenses. The real cost of construction and equipment of the railway would therefore never have been ascertained on the books of the company. Regarding the observation of the worthy Chairman that he cannot see how such claims could have been presented without refer-
(981) ence to the books as a proof, I think this a matter which the complainant should have considered before presenting the claim, and we have no reason to correct their

mistakes. In a court of law, both sides, and especially the complainant, has to prove their statements, and if either side neglects to do so judgment is given against it.

Mr. SCHRAMME: As stated before, the correctness of our books has been duly proven before the commission, before proper witnesses and by experts appointed by the commission, and, therefore, the burden of the proof that the books have not been kept properly or are falsely kept rests with the Government, which has not been done.

Mr. PENA: I do not question the correctness or the falseness. What I argue is that some of the entries are not proved.

The CHAIRMAN: The Chair has allowed considerable latitude to the discussion, wishing to reach a just conclusion, and unless there is something further to be stated on this question we had better consider the motion and put it to vote, if there is nothing further you desire to state thereon.

Mr. PENA: I offer and ask the adoption of the following resolution as an amendment: Whereas, the 32¾% upon the total cost of construction in addition to the cost of superintendence, transportation and incidental expenses, in which the 32¾% is included, in the Government's estimated cost of construction and equipment agreed to at the sum of $233,909.14 represented as large a proportion of the company's general expenses as could in any event be reasonably charged to the company's construction account, and inasmuch as the item that is now under consideration has not been proven in accordance with the Convention, therefore, be it resolved that this commission make no allowance for officers' salaries, office rent or other general expenses of the Cauca Company not included in the said sum of $233,909.14.

After some discussion thereon, the amendment was put to the vote and lost; the original motion was then put (982) before the Commission, and the Chairman, recording his vote "aye," the original motion was declared carried.

The meeting adjourned for lunch at 1:45.

The Chairman called the meeting to order at 2:30.

The CHAIRMAN: The next item which the Chairman respectfully submits for consideration is that of the transfer of the Concession, which amounts to $135,000, as charged to the Cauca Company, and your Chairman has recommended to be allowed as part of the legitimate expenses in the cost of construction, and is, therefore, included in the

award. The interest on that amount is also stated to be $13,643.33—that is, to December 31st, 1896—making a total of $148,643.33. What have you to say in regard to this, gentlemen?

MR. SCHRAMME: I move that the Commission awards this amount, $148,643.33, as part of the indemnity.

MR. PENA: I move to consider the interest apart from the principal.

This was agreed to by the Commission.

MR. PENA: I will say on this point that, having proved by my reply to the Chairman's Preliminary Report, that this item is not within the scope of the Convention, I will not vote for it, and I wish to add a few remarks. The same argument advanced on the previous discussion on salaries applies to this item, and for the same reason, inasmuch as the only paper presented is a statement, not in the legal form required for this form of document. Furthermore, there are documents made between Mr. Cherry and the Cauca Company, and between Mr. Cherry and the Colombia Construction and Improvement Company, and it appears that Mr. Cherry remains finally the owner of the Concession, so that any payment that may have been made for that concession became nullified. This is only for the sake of argument, because my principal reason for objection is that, within the limits of the Convention, the Government had nothing to pay for the Concession, but only for the Construction and Equipment of the Railway. The Concession not being stipulated as one of the things to be (983) charged for, and being one of the things delivered to the Government, it is clear that payment should only be made for such items that are mentioned. I find in the rejoinder of Mr. Stine that he states that Mr. Cherry's interest in this company was represented by a certain number of shares which he had paid for and 2,000 shares out of a total of 20,000, which were given him in part payment of the Concession and part bought by him for cash. This assertion is very important, because it proves that the Concession has been purchased twice or that the payment of $135,000 was not for the Concession.

This method of purchasing the Concession in a matter of doubtful action is usual in contracts of this kind, in which the first Concessionary receives a certain amount of fully paid shares in payment of his services and of the estimated value of the Concession, therefore if the company fails, neither he nor the company lose anything; and the shares remain without any value, inasmuch as the object of the Concession is not attained and it was perfectly just

that they should in reality have no value; this appears to be the circumstance in the present case.

MR. SCHRAMME: I have only to refer to two points; one is the paper which my colleague states is a paper without certificate, meaning the contract between Cherry and the Cauca Company, which, if I am not mistaken, was copied from the minutes of the Company and was accepted in lieu of the original which the Company offered to procure in case the Government would not accept the copy of the minutes; so that, as the Extract of the Minutes was accepted, it must stand as the original contract, and, secondly, that Mr. Cherry, in accepting the sum promised by the Company both for a cash payment of $135,000 and a portion in stock for his labor and heavy expenditures in procuring the Concession, shows only that Mr. Cherry had great confidence in the enterprise and he most certainly is entitled to be repaid for the amounts due him by the company. The amount of $135,000 was distinctly accepted by the company as the amount due him for the Concession in (984) cash, and, besides, it also agreed to pay him the amount of $30,000 in fully paid stock of the company. This is the actual price for which Mr. Cherry agreed to sell the concession to the company, which has been clearly proven in the testimony.

Mr. PENA: In the documents presented to the Commission no mention is made of the payment in shares, but it is stated that Mr. Cherry returns a certain number of shares which had undoubtedly been allotted to him at a previous date, which proves that he had at a previous date been paid a certain amount in shares. Besides, the mere approval of the directors, is not legally sufficient, if not made in due legal form, and, inasmuch as the document presented before the commission is a copy of the contract, the commission cannot take it into account.

Mr. SCHRAMME: We offered to get the original, and Mr. Robertson distinctly stated that he would accept a copy of the minutes in lieu thereof.

The CHAIRMAN: Gentlemen, the motion before us is the adoption of the motion as offered by Mr. Schramme—viz., that the amount asked for in the claim of the Cauca Company for the Concession ($135,000) be approved and awarded.

Mr. PENA: I vote "no" on the ground that under the terms of the Convention under which this Commission derives its power, this Commission is not allowed to make allowance to the Cauca Company in recognizance of any sum having been expended by it on the acquisition of the Concession of the 27th of August, 1890.

Mr. SCHRAMME: I vote "aye."

The CHAIRMAN: The Chairmun will vote "aye." and state his reason to be that he believes the company is legally responsible for the amount of the sum named, that it could not undertake the work without having purchased previously the concession, and that it was not to be expected that the company would surrender so valuable a concession without proper compensation, as shown by the quotation made in the preliminary report of your Chair-
(985) man of Law 41 of 1896—the motion to award $135,000 is therefore carried.

The CHAIRMAN: The second portion of the amount before us is to award the amount of interest due to Mr. Cherry for the Concession and for a loan of $500, making in all $13,643.33. Gentlemen, what are your views in regard to this item?

Mr. PENA: I object to that item for the same reasons as I do the principal, adding that whatever amount be awarded to the company only becomes due the date it is awarded, and therefore there is no reason to charge interest on sums which have not yet become due.

The CHAIRMAN: Mr. Schramme, what is your view?

Mr. SCHRAMME: In the first place, I say that the contract distinctly states when it became due, and it should have been paid, but the company had no funds. Mr. Cherry was lenient and forbearing and let it stand.

After considerable discussion on the motion, the Chair asked if there was any further argument, and no further argument being presented by either side the amount was put to the vote.

Mr. Schramme voted "aye."

Mr Pena voted "no."

The Chairman stated that he would cast his vote "aye" for the reasons explained, and the motion to award $13,643.33 to the Cauca Company was declared carried.

The CHAIRMAN: The question is now before the meeting to award the company its traveling expenses, amounting to $29,385.88, traveling expenses of Messrs. J. L. Cherry and C. F. and S. C. Schramme, the items of which are expressed in the Chairman's Preliminary Report, page 16.

Mr. SCHRAMME: I move that the traveling expenses of the late Mr. James L. Cherry and Messrs C. F. and S. C. Schramme, amounting to $29,385 88, be awarded to the Cauca Company by the Commission.

Mr. PENA: I object to the item on the ground that the traveling expenses are not included in the cost of Construction and Equipment of the railway. Moreover, the same

argument applies that there is no proof of the expenditure,
(986) and therefore it does not comply with the requirements of the Convention, viz., that the company shall prove these expenditures.

Mr. SCHRAMME: There are vouchers for these on file.

Mr. PENA: The expenses are extremely exaggerated and quite capricious, because traveling in Colombia is very cheap, and there are besides items included under this head which are not strictly traveling expenses, and therefore are not legitimate or necessary, according to the ruling of the Honorable Chairman.

Mr. SCHRAMME: I have no further remarks to make on the subject.

The Chairman placed the motion to the vote and Mr. Pena voted "aye."

Mr. Schramme voted "no." The Chairman cast his vote "no" and the motion was lost.

The original motion was then placed to the vote.

Mr. Pena voted "no."

Mr. Schramme voted "aye."

The Chairman casting his vote "aye," the original motion was declared carried.

The CHAIRMAN: The next matter before us is the matter of compensation to the officers.

Mr. Pena at this juncture suggested the adiournment of the Commission until the the next day and the Chairman declared the Commission adjourned until Tuesday, the 19th inst., at 11 A. M.

(Signed.) LEWIS M. HAUPT, Chairman.
MANUEL H. PENA,
Commmissioner for the Government.
Commissioner for the Company.
HAROLD R. MILLER,
Secretary.

Thirty-fourth Session.

(987) Held at 55 Broadway, New York City, on Tuesday, the 19th October, 1897, at 11 A. M.

Present—Lewis M. Haupt, chairman; Mr. Manuel H. Pena, Mr. Christian F. Schramme, and the Secretary.

The Chairman called the meeting to order at 11:25 A. M.

The CHAIRMAN: The Chair will return the minutes of the 32nd session to the Secretary with a few verbal alterations.

The alterations having been noted by the Commission, the minutes were taken as read and approved.

Gentlemen,—Our work yesterday was carried as far as the consideration of the item of bonds. We had just disposed of one item of interest, and we have passed over one item of interest. If it be your desire, we will consider that item next.

Mr. SCHRAMME: It is agreeable to me that we consider the items of interest on the $223,909.14 cost of local construction, which interest amounts to $48,668.18 from October 1st, 1893, to January 26th, 1897, the first date being the date up to which construction work was liquidated, and the second date being the date of the delivery of the road to the Government.

The CHAIRMAN: Gentlemen this question is before us for consideration as to the impropriety or propriety of allowing interest on the local cost of certain items of construction as stipulated.

Mr. SCHRAMME: I move that the interest amounting to $48,668.18 on the cost of construction from 31st October, 1893, to 26th January, 1897, at the rate of 6% per annum be awarded by the Commission to the Cauca Company.

The CHAIRMAN: Gentlemen, you have heard the motion which is now before us for discussion.

Mr. PENA: I see no reason to allow interest on an amount that we have only just recognized as due, inas-
(988) much as it is an admitted principle that until a debt is contracted there is no obligation to pay it, therefore it is premature to talk about the matter. The interest will be liquidated when the Commission declares that the amount shall become payable which has not yet been agreed on, and even this will be in the event of the Government not paying the amount at the proper time. Further, the Company has been usufructing the net revenue of the railroad, and it is with that object that capital is usually invested in enterprises. Those profits have been recognized by the representatives of the Company, who have declared that the operations of the road have been conducted at a profit. In any case, it would be an absurdity to pay interest on the capital invested and allow the Company at the same time to usufruct the revenue of the road. That would be tantamount to obtaining the return on the capital twice. When an enterprise is built up, a certain amount of capital has to be invested, and then the parties who are in charge of the management of the concern estimate the profits by the operations of the enterprise, and this profit constitutes a percentage on the amount of capital invested. Let us take, for instance, a bank that, at the time of balancing its

accounts, should first calculate a 6% interest on the capital invested, and should find that the net profit on operations was only 5%, where would they obtain the 1% deficit? Would it not be an absurdity to take from the pockets of the shareholders the 6% interest in order to afterwards pay them the 5% dividend? The usual operation is not to calculate interest on the capital first, but to pay the dividend that corresponds to the net profits of the concern. These conclusive reasons, especially that of paying twice the return on the capital, will, I am sure, sufficiently influence the minds of my colleagues to enable them to vote unanimously against this item. The Company has already derived from the operation and management of the road sufficient profits to render it, in my opinion, unnecessary for the said Company to endeavor to obtain still further (989) profits by a claim that is manifestly unjust and extravagant.

Mr. SCHRAMME: The Honorable Commissioner always overlooks that there is a special stipulation which debars this Commission from taking into consideration the amounts derived from the revenue of the road, and the expenses paid by the Company for operation and maintenance. The amount of interest claimed by the Cauca Company is certainly an item of expense incurred by the Company in the construction of the road, and, therefore, should be allowed a proper expense. It has been clearly proven in the course of the trial, that the Cauca Company has derived no profit or emolument from the road. Such profits only exist in the imaginations of the honorable representative and Commissioner for the Government. The Company only endeavors to receive back from the Colombian Government the actual cost of its disbursements, and among these the interest in question should most certainly be taken as a legitimate expense.

Mr. PENA: The Commissioner on the part of the Government does not forget that it was stipulated that the Commission had no necessity to consider the revenue derived from the road nor the expense for operation and maintenance, but that does not imply that such profitable operations did not exist, and as counsel for the Company asserted that these operations did result in a profit to the Company, the Government, desirous of not exceeding the scope of the Convention, did not wish to consider such profits whatever they may have been, which has all been demonstrated by counsel for the Government in the documents put in by him, and which remain uncontradicted by the Company. Hence, these profits exist, and if I refer to them at present it is not, as the Honorable Commissioner

knows, with the view of reclaiming them, but in order to show that the Company has no right to claim interest inasmuch as it has derived profit, and even going so far as to say that it did not derive a profit, this would be consequent on the Company's own bad management, which is frequently (990) the case where companies fail in their enterprises.

I deny the right of the Company to try to include such items in the amounts expended, because there is not any stipulation anywhere which refers remotely to the payment of interest, but solely to the amount expended on construction and equipment of the railway. If the payment of interest had been contemplated, it is quite evident that the contracting parties would have mentioned it in the Convention.

The CHAIRMAN: Gentlemen: There have been some weighty considerations advanced on both sides of the argument, and also other points which occur to the chair, and which have not yet been touched upon and therefore your Chairman would respectfully request thit the consideration of this item be postponed until we can give the matter fuller consideration, and that typewritten copies of this argument be submitted to the Commission for that purpose. His ruling and efforts have been to apply the interpretation of the Convention which we have agreed upon, strictly to each item, and this one seems to possess exclusively points which will require deliberate consideration, hence the request made that the chair be allowed a little time for the further consideration of this item.

Mr. SCHRAMME: Do I understand the chair to say that it wished the Commissioners to present briefs on this subject.

The CHAIRMAN: No, the Secretary can send me copies of the minutes of to-day. The chair realizes that there is a great deal of force in some of the points raised by Mr. Pena, and it is a question of whether this comes under the stipulations with reference to the profit and loss of the Company; these are points which the chair wishes leisurely to consider. The chair would suggest that in making up this estimate of the cost of construction it was brought up to October 31st, 1893, but if the construction had continued, even to a very limited extent, up to the present date, then the allowance for the cost of construction would have run up to date and there would have consequently have (991) been no allowance at all for interest. The cost was figured up to what we might call an arbitrary date. Beyond that there appeared no additional charge for construction.

Mr. SCHRAMME: The Chair overlooks that we were

virtually debarred by the action of the Colombian Government from following up the construction of the road. Our property was taken away, every dollar was in jeopardy of being confiscated, and consequently by the said action of the Colombian Government and by the reigning circumstances, we were placed in the position of having to incur additional expenses in order to keep up the road.

Mr. PENA: There is nothing stipulated as to interest, only as to cost.

Mr. SCHRAMME: We only claim cost; what the shareholders have invested in this enterprise.

The CHAIRMAN: I think, gentlemen, you have both overlooked the real issue: that is, one which must be settled by legal precedence. We must determine what the law allows in such cases, and be governed by it; and, not being a lawyer myself, I want to look into the motion particularly, before rendering a decision on this point.

Mr. SCHRAMME: I understand that the motion remains for the present on the table, to be taken up at the suggestion of the Chair.

Mr. Pena offering no objection to this, the chairman declared that this was agreed.

The CHAIRMAN: Now, let us revert to the next item in order, which is that of Compensation, on page 16 of my Preliminary Report.

Mr. SCHRAMME: I would request the Chair to review its proposed decision under this head, and would kindly request Mr. Miller to read my views on this subject, which are on the following paper:

I would like to be heard on the proposition to disallow $50,000, compensation of Cherry and Schramme for their two trips to Bogota and the work performed by them of an extraordinary nature. They certainly are entitled to extra (992) compensation for this work, and the Colombian Government was fully aware of their demands, as is clearly shown by the letter of His Excellency President Caro to the U. S. Minister, and which letter is in evidence and uncontradicted. In this letter His Excellency does not repudiate their claim because being unjust, unwarranted or excessive, but because its acknowledgment would be prejudging the case, and that therefore the decision on this point must be left to the arbitrators. This shows conclusively that the Colombian Government was fully aware of this claim, and that the arbitrators have a perfect right to take it into consideration. The $50,000 was duly and *bona fide* paid by our Company, and forms an item of expense incurred in the construction of the Cauca Railroad.

The reason that both Cherry and Schramme are salaried officers of the Company and therefore not entitled to extra compensation is, in my opinion, not a good one, because neither law nor common sense, unless specially agreed, would compel a salaried person to perform outside of his regular work, duly defined by the by-laws, extra work not bargained for, such as leaving their homes and business for an indefinite period, risking their health and being in attendance day and night without due compensation. That this compensation could *only* be fixed and voted by the Company after it had been performed, consequently after the arrangement of the Colombian Government had been made, is evident, and therefore should be no reason for its disallowance. Besides, the minutes of the Company duly show that Cherry and Schramme demanded extra compensation before entering upon their journeys to Bogota, and that the Company recognized their demand as just. It might, however, be claimed, and not without good grounds, that their salaries during the period of their absence should be deducted from the compensation granted them, and in that case $20,800 should be deducted from the $50,000, leaving thus a claim of $29,200, which should be allowed.

The CHAIRMAN: The Chair will state that it will, of course, be pleased to reconsider any suggestion that is contained in its report.

(993) Mr. PENA: I would like to hear the chairman's views on this point.

The CHAIRMAN: I merely say that the matter has been opened up for discussion, and the chair will be glad to hear from Mr. Pena in reply to Mr. Schramme's argument.

Mr. PENA: It will be difficult to surmise what place can be assigned in these proceedings to the discussion of sums which the company pretend to have been paid after the signing of the Convention of the 4th of January, 1897. The company received an amount on account of the cost of construction and equipment, and if the honorable representatives of the company had seen fit to appropriate this $200,000 which they had received from the Government on account, in compensation for their own services in obtaining same our contention would have no end, because as soon as these gentlemen had obtained a further compensation they could go on appropriating it to themselves, and ask to be still further indemnified by the Government. This conclusive argument, which can be advanced in favor of the whole of the amount, can also be applied to part of the amount. This item is undoubtedly decided by

the Convention. That the President of Colombia had knowledge that the representatives claimed extra compensation does not argue anything, and I may say that I have in my possession documents in which His Excellency, Mr. Caro, states that when he heard of this claim he repudiated it, which I think he certainly should have done, as the claim is an absurpity. It would be the same as if he also had knowledge of some of the other items of the claim, because he never entered into any details with regard to the claim, leaving to the Arbitration Commission to decide the points submitted to them, which were those of the cost of Construction and Equipment of the Railway until the moment of the signing of the Convention. The Honorable Commissioner for the company himself recognizes the injustice of the claim, inasmuch as he deducts the salaries corresponding to the period of the absence of the representatives from New York from the amount of the com-
(994) pensation; therefore he recognizes that they were in the service of the company, and that their efforts to save the wreck of the company's fortunes were efforts made on behalf of their own interests represented by theirs and their friends' stock in the company, and they were further paid a salary for such efforts. Furthermore, as the amount is an arbitrary one, and no voucher has been presented, there is no reason to consider the sum even in the form to which the Honorable Commissioner has seen fit to now reduce it.

The CHAIRMAN: The chair having heard the arguments on both sides of the question now opened up for reconsideration, would suggest, in order that we may have something definite to act upon, that a motion be now made which would cover the item in the form now presented by the Honorable Commissioner for the company. It is under the impression that the time spent in Colombia by the representatives was about thirteen months; he notes that the Commissioner for the company only takes one year into consideration. Deducting the thirteen months' salary, this reduces the item of compensation $50,000 to $29,200.

Mr. SCHRAMME: I move that the amount of $29,200 be awarded to the Cauca Company, being for compensation due Messrs. Cherry and Schramme for their services during their two trips to Bogota.

The CHAIRMAN: Gentlemen, this matter is now before us for further discussion in the form of a motion. If there is anything further to be said on either side the chair will be glad to hear it now.

There being no further arguments advanced, the chairman said:

Gen'lemen: We have now discussed this question on its merits and the chair has agreed to reconsider its suggestion as set forth in the preliminary report, and for this purpose would ask the secretary if he would kindly refer to Mr. Pena's argument so that the chair may take into consideration its full bearing.

The Secretary then read Mr. Pena's proceedin argument.

(995) The CHAIRMAN: The chair would state that in making up its report when reaching this item, it had already surrendered all the records and minutes to the secretary for revision and publication, and had lost sight of the fact for the time being that the letter from H. E. the President of Colombia to Mr. McKinney, referred to this matter. And also of the fact that this item had been submitted to H. E. as one of the items of the claim. These facts have, in the chair's opinion, a material bearing on the question on the legitimacy of the amount, as it certainly follows that the Company has recognized these services as extra services, and have authorized and paid to each Commissioner the full amount of $25,000 for such services. Hence, there is no way to compensate the Company for this expense except by charging it as one of the legitimate items entering into the cost of construction. The chair presumes that the honorable co-Commsssioner believes that the amount has been actually paid, as was stated in the testimony and shown by the accounts submitted to the Commission. The chair does not think that—because in a single instance the payment of this account has been made, that it would establish a precedent or warrant for unlimited demands on account of the same services. This could only result from a dishonest purpose on the part of the claimant: with reference also to the fact stated that this is undoubtedly outside of the Convention, the chair's view of that point is, that inasmuch as it was submitted to H. E. President Caro, and that he declined to consider it as an item, but referred it to the Commission to determine, was in itself sufficient evidence that in his judgment the Commission could take cognizance of matters of this character, and shows his view of the scope of the Convention. That he repudiated it is, perhaps, another way of saying that he declined to consider it, as he also declined to consider specific items of the claim, since they were properly referable to the Commission proposed to be appointed under the Convention, and it therefore argues nothing as to its propriety or

impropriety. The concession on the part of our worthy
(996) colleague to deduct the salary which the officers of the Company were receiving at the time of their trips to Bogota may be in the nature of a compromise or concession, but is to that extent voluntary, as, the award itself being an arbitrary one, it does not necessarily follow that the Company might not have made it larger, making due allowance for the salaries. But inasmuch as it has the appearance of paying the salaries twice, it would seem to your Chairman to be entirely proper that such deduction should be made from the amount. In conclusion, therefore, and upon careful—I may say very careful—consideration, applying the rule rigidly to this item, your Chairman believes that it would fall within the limits of the scope of the Convention, and constitutes a legitimate part of the expense of "construction," and is therefore recognized, and he recommends the award of the balance, after deducting the salaries, amounting *in toto* to $29,200, on account of this item of extra compensation.

Mr. Pena: The Hon. Chairman absolutely ignores that the compensation granted by the directors of the Company was after the signing of the Convention, and I fail to understand how, in view of that fact, he still considers it an item that should be included in the indemnity. In the same way the directors might vote to each shareholder an amount as "compensation" for their extraordinary efforts in keeping together the Company, and make these sums balance each other in order that they would not be an item of expense to themselves, but would appear in the accounts as a disbursement, inasmuch as, the principle being established that the directors can make payments to themselves after the Convention was arrived at, there remains no objection whatever to settling a comfortable compensation on each one of the parties interested. Hence, I am unable to believe that in suggesting the consideration of this item any principle of justice whatever has been taken into account. As I have stated, there is no proof of the payment, because the entries on the books are not proved, the honorable Chairman himself having admitted that the
(997) books were merely a guide to search for the proofs of account subsequent to the signing of the Convention. The Honorable President will recognize that it would be a dishonest act for the Company to again claim a new compensation; therefore, he recognizes implicitly the dishonesty of this present claim, because any subsequent claim would be under the same circumstances as the present one. The directors might claim that Messrs. Cherry and Schramme were creditors for a still larger amount, and

the Honorable President could just as well recognize the excess on the ground that they had made a mistake on the first amount mentioned. The arbitrary nature of the amount lends itself to this. As the Honorable Chairman insists in saying that H. E. President of Colombia had knowledge of the claim, I must say that he was unaware of the amount claimed, nor was there any necessity for him to know it.

Mr. SCHRAMME: I only wish to state that the amount of $30,000 was mentioned in the claim presented to H. E. the President of Colombia on the first trip. Furthermore, that with regard to the allegation of my honorable colleague that the claim was unfounded because it had not been proved by proper vouchers, the proof of the payment has been furnished to this Commission by the examination of the books, the revision of the same by the expert and furthermore by the bank checks duly presented for payment, which are the proper vouchers therefor.

Mr. PENA: I referred to the matter of proofs, not because I founded my argument on that, but because it is a stipulation in the Convention, but my principal argument is that the amount having been approved and paid considerably after the signing of the Convention, it is claimed that it cannot be considered as forming part of the indemnity.

Mr. SCHRAMME: The argument of my honorable colleague that the compensation was only approved and paid after the Convention was signed is no argument against the admission thereof in the award to the Cauca Company, because the services were performed and the compensation (998) was earned before the Convention was entered into, but could only be approved on the part of the Company after the services had been performed for which compensation had to be granted, which period was naturally after the Convention had been brought about.

The CHAIRMAN: The Chair having listened to the arguments on both sides, would respectfully submit that it does not think there is anything which looks towards dishonesty in this claim for the extra compensation, and it does believe that both parties were mutually benefited by the services rendered; that the Commissioners were summoned to Bogota by the Government; and, if they had not gone, possibly more serious and expensive consequences would have resulted therefrom for the Government. The Government might have appointed a special delegation to visit this country for the purpose of effecting a settlement, so that the benefits of that trip were undoubtedly mutual. The Chairman has not ignored the fact that this item was

charged up after the Convention was signed, but that was one of the necessary consequences of the events in chronological order; viz., that the amount of the award and the report on the services could not be acted upon until the Convention had been signed and the directors had returned to their home offices. Moreover, it does not invalidate the item merely because it is entered up after the execution of the Convention, as there may be liabilities incurred prior to that time which may not have fully matured or about which there may be uncertainty as to the amount which might be legitimately authorized and which the company would finally have to pay, so that the fact of the entry having been made subsequent to the execution of the Convention is not a material fact.

The Chairman does not recognize that the Company was making an additional or new claim, but merely the original claim for the original services as rendered, and he regards it as a legitimate claim. That is all the chair wishes to submit on the question.

Mr. PENA: When I said that it would be possible for the directors to allow subsequent compensations, it (999) was in order to rebut the principle of such compensations, because it is clear that, one compensation being admitted, there is no limit to the number that can be afterwards presented. The principle being established, the allowing of this compensation can establish in the mind of the hon. Chairman the precedent of allowing further compensations which the Company might set about preparing, as forming part of the cost of construction.

The CHAIRMAN: In order to relieve the mind of his honorable colleague, he will say that he does not take this as a precedent for further compensations.

Mr. SCHRAMME: And, furthermore, no such further considerations are to be advanced.

The CHAIRMAN: Gentlemen, are you ready to vote on this amount?

The motion being put to the vote, Mr. Schramme voted "Aye," Mr. Pena "No," and, the Chairman casting his vote as "Aye," the motion was declared carried.

It being 1:45, the Commission adjourned for lunch.

The Commission met again and was called to order at 2:40.

After deliberation on the subject, it was decided the minutes of the sessions numbers 1 to 29 should form the first two volumes of the printed record, and that the third volume should contain the documents (exhibits) and the

deliberations of the Commission, independent of the testimony.

The CHAIRMAN: The next item for our consideration, gentlemen, is that of the interest on stock and bonds, page 17 of the preliminary report. What is the pleasure of the Commission with reference to the items considered under this head?

Mr. SCHRAMME: That item is $32,333.40, being the interest on the actual amounts paid in on bonds amounting to $124,750.04, due under the subscriptions to the Cauca Company's bonds. I move that this amount be awarded to (1000) the Cauca Company by this Commission as part of the amounts expended under construction.

The CHAIRMAN: This question is now before us for discussion.

Mr. PENA: There has been presented before this Commission the consideration of an amount payable for interest on the amount of $233,909.14 which covers the cost of construction, and as the capital subscribed and the products of the bonds issued have been used for this same purpose of construction, I propose that the consideration of this item be postponed for consideration at the same time as the before-mentioned item. In the first place, because I consider that they are one and the same thing, and in the second place, because I think that the Convention never had in view the payment of interest, but only the amount spent on construction and equipment.

Mr. SCHRAMME: I beg to differ with my hon. colleague on this item. The bonds were issued and authorized by the Cauca Company and carried interest at 6%, and constitute a solemn obligation of this Company to the holders of those bonds and for which the Company is liable to the bondholders. It being therefore a liability incurred for the construction of the road, these amounts should be allowed the Company, irrespective of the amount, discussion of which has been suspended at the suggestion of the Chairman.

The CHAIRMAN: Mr. Pena's suggestion was to postpone the discussion of this item on the ground that it was parallel or similar to that of the other item which the chair desires to take time to consider. The chair dissents from the opinion of Mr. Pena on that point for the reason that this is a distinct and well-recognized liability of which there was due notice, and for which the Company is unquestionably liable to the bondholders, so that the considerations which would apply to the first instance would not be so directly applicable to this. But if it is desired that this Commission postpone the discussion of this item, it can be postponed until a decision be reached on the previous point. So

far as the chair is concerned that is immaterial. The
(1001) chair would like to add also that the amount as figured here is slightly different from the amounts mentioned in the Company's claim and in the report of the expert, and was made up from the books of the company, taking the days on which the payments were made and including interest thereon up to the date of the transfer of the road, and this gives the total of $32,233.40, which is different from the amount stated in the other papers.

Mr. PENA: Which is the larger amount?

The CHAIRMAN: Mr. Barney makes it..... $61,252 26
The half of this would be..... 30,636 13
The Company's claim amounts to..... 64,934 75

Mr. SCHRAMME: It shows the justice and my feeling in the matter, as I deduct from the claim the interest on that portion of the bonds not paid in, and I now limit the amount of claim to interest on the cash amount of capital paid in by the bondholders.

The CHAIRMAN: The company's claim is $64,934 75
half of which is..... 32,467 75
which is slightly in excess of the interest
which the chairman has figured, viz..... 32,333 40
Mr. PENA: Mr. Barney's statement has 30,626 13
up to 4th of April, 1897; why is it that the chairman's calculation, being only to the 26th of January, 1897, amounts to more?

The CHAIRMAN: On examination of these items in Mr. Barney's report, it will be found that the difference is due to the different amount on which Mr. Barney had calculated interest, the difference being about $15,000 less in the case of Mr. Barney than in the case of the company. This is explained in Mr. Barney's testimony. In making up the statement in the Chairman's Report the payments were itemized and interest included separately on each subscription. As the chair has not the paper here it cannot state the total, but it will furnish it to the Secretary for entering upon the minutes and will ask him to prove the calculation. The question before us is the postponement or adoption of the item.

(1002) Mr. PENA: I wish to state clearly the reason why I asked for the postponement of this question, it is not because of its being of a similar nature as the first item, discussion of which has been postponed, but because the interest that is being discussed now is the same interest as the previous item and cannot, therefore, be considered twice. The reason is this: There is a capital raised by the company for carrying out the enterprise, and this is the amount spent on Construction and Equipment. If we consider separately

the amount recognized as the cost of construction, and the capital raised by the company, and allow interest on both of them, this would come under the same category as compensation and there would be no limit to the claims, because the capital is one and the same in both cases, and the consideration of the payment of interest on that capital has been suspended for after consideration. If we are going to consider again a part of this capital, and again allow interest on it, it would seem that we can go on repeating this principle like a magic-lantern slide, making the same picture appear several times and making the spectators pay each time to look at it.

Mr. SCHRAMME: All that I have to say is that my esteemed colleague only takes into consideration the amount spent on a portion of the work, but leaves out of consideration the sums that have been spent on the other portions thereof.

Mr. PENA: In my opinion the total cost that the Convention allows is covered by the stipulation of the 31st of August, and therefore as that is my opinion, and as no amount, is as yet due for interest, there is no reason to allow interest beforehand; therefore, I submit the following motion: That the consideration of one item of interest shall cover both of them.

Mr. SCHRAMME: Although the interest item, discussion of which has been suspended, has nothing to do with the question of interest now under discussion, I consent nevertheless to the postponement of discussion in deference to the wishes of my two colleagues.

(1003) The CHAIRMAN: That being understood, we will proceed on the stipulation of the interest on stock and bonds, as the chair thinks we should take definite action as regards the items embodied in its report. The chair will submit, therefore, that the Company makes the claim for interest on capital stock paid in ($250,000) from October 15th, 1890, to April, 3d, 1897 (six years five months and nineteen days), at 6% p. a.—claim $97,041.66.

Gentlemen, what disposition shall be made of this amount?

Mr. SCHRAMME: The Commissioner on the part of the Cauca Company resolves to state that he waives this claim of $97,041.66, because in lieu thereof the interest of the award for a part of the construction road as per stipulation of August 31, 1897, carries the interest up to the date of surrender.

The CHAIRMAN: It is understood, therefore, that this amount is withdrawn from the claim of the Company by consent of the Commission.

Mr. PENA: I maintain that interest is not payable under any consideration, so that this may be borne in mind, and does not imply that I accept the waiving of one item in compensation for the allowing of another.

The CHAIRMAN: That is so understood by the Commission. The next item is the interest on bonds which we have agreed to postpone. The next is liabilities of the the Cauca Company: 6% bonds received in cash 50% and accounted for in construction, $132,250 remaining due to the shareholders to be paid to the Cauca Company. This amount being embodied in the claim of the Company it is before us for consideration.

Mr. SCHRAMME: As Commissioner for the Cauca Company I beg to state that in my judgment the claim for the unpaid portion of the bonds, amounting to $132,250, is inadmissible, and is, therefore, withdrawn.

The CHAIRMAN: With the consent of my colleague from Colombia, the record will be so entered. That, gentlemen, disposes of all the items under that head; the next item before us is that of the New York office and sundries, which, according to Mr. Barney's report, shows the amount of $16,605.10.

(1004) Mr. SCHRAMME: I move that the Commission award the sum of $16,605.10 to the Cauca Company, being the total amount of the New York office expenses as proven by the books of the Company and appertaining to construction.

The CHAIRMAN: This total includes the following items as per Mr. Barney's report, viz.:

a1. Rent and Office Expenses.....	$ 1,887 42
a2—Salaries.	318 30
a3—Legal Expenses.....	8,803 70
a4—Traveling Expenses in the U. S. & Europe.	3,275 75
a5—General Expenses...	331 80
a6—Sundries	575 12
a7—Petty Cash	1,413 01
Total.	$16,605 10

The question is now open for discussion.

Mr. PENA: I object to the item inasmuch as this total is comprised in the stipulation of August 31st, 1897; also, where 32½% is allowed for all expenses of administration and contingencies, and I object to the items in themselves inasmuch as legal expenses, according to such eminent witnesses as Alcott, Fuller and Adams, was not a matter chargeable to construction, and I am of their opinion, because the advice of counsel is for the private benefit of the

party interested, and in no way affects the work to which the advice applies. As regards traveling expenses in Europe and United States, I presume they were with a view of raising capital for the Company, and according to the views of the same expert opinions are also private matters of the Company which we have not to consider, and, even if that were so, the 32¾%, being percentage much higher than is usually allowed for administration and contingencies, covers amply any expense of the Company under this head.

Mr. SCHRAMME: The Commission for the Cauca Company claims that this was legitimate expenses, necessary and always incidental to great enterprises, and therefore (1005) must be allowed as appertaining to construction under the rules of the Convention.

The CHAIRMAN: Did you wish to explain any points raised by Mr. Pena, Mr. Schramme?

Mr. SCHRAMME: We differ in our opinion. I contend that the item is necessary for carrying on a vast enterprise. The so often quoted 32¾% only covers, as is well known from the stipulation, local contingencies and administration expenses on the portion of the road.

Mr. PENA: Will you kindly repeat the stipulation; this is the time to raise a discussion on this point. In the first place, you say the stipulation only is for part of the construction and we contend it is for the whole of construction; in the second place, the company accepted the estimates of Mr. Cisneros for revenues and operation expenses in which are included everything appertaining to repairs, so that was the complete road, because it says "Complete Road," and when we say "Complete" we understand it cannot be completed if anything remains to be stipulated; hence everything referring to Construction is comprised in the Stipulation.

The CHAIRMAN: The Commissioner from Colombia has referred to the evidence of some of the experts of the Government who say that legal expenses should not be allowed. The chair will take the liberty of calling attention to the letter of Mr. E. Del Monte as to what appertains to the management of the road. Mr. Elliott also includes "attorney's fees" in his letter. Prof. Amy says the "intellect for directing the work and all expenses for that purpose which enter into it," and upon looking over the testimony it would seem that it is the opinion of those competent to judge that the legal expenses do constitute a legitimate part of the expense of construction of the road and the traveling expenses, &c., were incurred unnoubtedly in carrying on this enterprise while it was in the posses-

sion of the company and, therefore, your chairman included them under this head as arranged by the expert, amounting to $16,605.10 as constituting a portion of the administration expenses in the Home Office and suggested that (1006) they form a legitimate item for consideration under your account. That is all.

Are you prepared to vote on this question as regards awarding $16,605.10? No further arguments being advanced by either side, the motion is put to the vote. Mr. Schramme voted "aye," Mr. Pena voted "no" and the chairman casting his vote "aye" the motion was declared carried.

The CHAIRMAN: Before adjourning let us dipose of one item of incidentals as per the total amount in Mr. Barney's Report, $5,122.48.

Mr. SCHRAMME: I move that this amount of $5,122.48 be awarded to the Cauca Company.

Mr. PENA: The objections I have raised on the previous item also apply to this. The motion was then put to the vote. Mr. Schramme voted "aye," Mr. Pena voted "no" and the chairman casting his vote "aye" the motion was declared carried

It was decided to hold an informal meeting at No. 55 Broadway on the 20th inst. at 2 P. M., if possible, for the purpose of signing the official copies of the minutes.

The Commission then adjourned until Friday at 11 A. M., at the Army Building.

(Signed.) LEWIS M. HAUPT.
Chairman.

MANUEL H. PENA,
Commissioner for the Government.

_____,
Commissioner for the Company.

HAROLD R. MILLER,

(Signed.) HAROLD R. MILLER,
Secretary.

(1007) I have signed all the foregoing minutes of proceedings from the first to the thirty-fourth Session, both inclusive, covering the proceedings during my membership of the Commission I have done this simply as an attestation of the correctness of the report of the proceedings, but not in approval of the proceedings themselves, which I protest have been carried by the majority beyond the

lawful scope of the Convention, and are for that reason without jurisdiction and void.

(Signed.) MANUEL H. PENA,
Commissioner for the Government.

Thirty-fifth Session.

(1008) Held at the Army Building, New York City, on Friday, October 22nd, 1897.

Present—Prof. Lewis M. Haupt and C. F. Schramme.

The Secretary read to the Chairman the following letter and enclosure which he stated he had received that morning from Mr. Manuel H. Pena, the Commission for the Government:

OCTOBER 22ND, 1897.

TO THE SECRETARY OF THE COLOMBIA-CAUCA CO. ARBITRATION COMMISSION,
Clarendon Hotel, City:

DEAR SIR—I beg to enclose you translation of a letter I have this day addressed to H. E., The Minister of Hacienda at Bogota, containing my resignation as a Member of this Arbitration Commission, which resignation, of course, takes effect from this date.

I shall esteem it a favor if you will kindly place the same before my Honorable colleagues at your next Meeting.

Yours truly,
MANUEL H. PENA.

OCTOBER 22ND, 1897.

(Translation.)

TO HIS EXCELLENCY, THE MINISTER OF HACIENDA,
Bogota, Republic of Colombia:

In view of the fact that Lewis M. Haupt and Christian F. Schramme, both appointed as members of the Commission created pursuant to the Convention of January 4, 1897, to decide the controversy between the Cauca Company and the Republic of Colombia relative to the Cauca Co. Railway, have declared their intention to allow the Cauca Company very large amounts (1009) of money for alleged expenditures of the Company having no relation to either the construction expenses of the Company or the purchase of material on the construc-

tion of said Cauca Railway or for use thereon, and whereas the said Commission has not, and never had, jurisdiction to pass upon or allow such expenditures; and, whereas, in my judgment, said Commissioners have departed from the terms of said Convention and propose to act in the matter of said controversy in a manner wholly beyond their official power as such Commissioners, and to make an award upon matters which the parties to said controversy never intended to submit to their decision; and whereas, under the said circumstances, I am convinced that it is my solemn duty to refuse to act further with such Commissioners and to decline to remain a member of such Commission until the alleged intentions of said Commissioners shall have been carried out by the making on their part of a pretended award upon matters not submitted to said Commission.

I therefore beg to say that I hereby resign as a member of said Commission, such resignation to take effect at the moment of my signature hereto.

Dated at New York City, this day, 22nd of October, 1897.

The Secretary then handed the Chairman a letter addressed jointly to himself and Mr. Schramme by Mr. Cisneros, of which the following is a copy:

New York, October 22d, 1897.

MESSRS. LEWIS M. HAUPT & CHRISTIAN F. SCHRAMME:

Gentlemen,—Being informed by Mr. Manuel H. Pena that he has resigned his office of Commissioner in the matter of the arbitration of the controversy between the Cauca Company and the Republic of Colombia, I desire on behalf of the said Republic of Colombia to say that such resignation on the part of Mr. Pena has destroyed the autonomy of the Commission of which you and he were members, and that under such circumstances no further act on your (1010) part can have any force or effect as an official act on behalf of such Commission or as an official act of a Commissioner in said matter.

Yours very faithfully,

F. J. CISNEROS.

The Chairman then stated that the Commission would come to order in the absence of Mr. Pena.

The minutes of the 34th session was handed to the Secretary by the Chairman, with a few typographical alterations, and were taken as read and approved.

The Chairman then proceeded to dictate to the Secre-

tary the following statement in reference to his Preliminary Report:

The Chairman stated that, at the opening of the Commissioners' deliberations, there was no objection to making such deliberation public, and that Mr. Pena should have the advantage of submitting his arguments and the full discussion to His Excellency the President of Colombia in order that his record might be entirely clear in the premises; but in publishing the record the Chairman does not desire to depart from the usual legal precedent, and will, therefore, divide his report into two parts, one relating to the scope of the Convention, giving his reasons and his conclusions therefor, and the other, in the nature of suggestions to the Commission as to what items should be considered, is not to form a part of the record, but is merely intended to serve as a guide to the Commissioners' deliberations. He wishes, therefore, to close his report with the page 12, which he begs to substitute herewith.

(Page 12.)

(Of the Chairman's typewritten Preliminary Report.)

SUMMARY OF OPINION.

Your Chairman has given careful consideration to the point made by Counsel for the Government as to the mean-
(1110) ing of the word "construction" as used in the Convention, and he has already stated his conclusions thereon in the foregoing pages, thus determining the full purport and scope of the Convention as originally understood and mutually agreed to by both of the contracting parties, to be that: In consideration of the surrender of the franchises and delivery of all the material property in possession of the Company in Colombia, the Government agreed to pay to the Company the legitimate cost of producing these results during the time the enterprise was under the control of the Company.

THE LEGITIMATE EXPENDITURES.

The Company's claim is for $962,438.74, and this does not include losses of money destroyed by the fire at Buenaventura, cost of reconstruction of the bridges and repairs to the old line to Cordoba, discounts on libranzas and the balance of guaranty due on completed road up to date of transfer. Were these items to be included they would aggregate over $1,000,000. The principal items to which objection is made by the representatives of the Government are all of those incurred outside of the Republic, such as salaries of officials, their traveling expenses, office rent,

clerks and attorneys, as well as all charges for interest and the price of the concession, thus reducing the amount of the indemnity for the complete cost of the road whilst in the hands of the Company to the sum of $233,909.14 as full compensation for all claims. It now remains for the Commission to consider these differences and to determine what items under the above ruling constitute legitimate and necessary expenditure, and to award the same as a part of the just indemnity under the terms of the Convention of January 4, 1897.

Respectfully submitted,

LEWIS M. HAUPT,
Chairman.

(1012) The amended page 12, as above, was handed to the Secretary for insertion in the minutes, with instructions not to publish the preliminary report, excepting from pages 1 to 12, inclusive, as amended.

The Chairman then instructed the Secretary to enter on the record a statement to the effect that Mr. PENA, having resigned, and in view of Article 5 of the Convention and resolution passed at the meeting of April 26th, that all matters should be decided by a majority vote, it was decided that copies of Mr. Pena's resignation, Mr. Cisneros' letter and a statement of the circumstances connected therewith be forwarded to the Secretary of State at Washington, asking for instructions and authority to continue the making of the award without the co-operation of the Commission for the Government.

While dictating the above statement to the Secretary, Mr. Stine, attorney for the Company (previously sent for by Messrs. Haupt and Schramme), appeared at the meeting. He immediately suggested the adjournment of the meeting until next day. After a whispered consultation between the commissioner and attorney for the Company, Mr. Schramme stated that he wished to put forward his side of the case, if the Secretary would kindly withdraw, and the Chairman acquiescing therein, the Secretary was asked to retire from the meeting, and withdrew.

After the Chairman, Mr. Schramme and Mr. Stine had been in private consultation for about half an hour, the Secretary was asked to return to the room.

Mr. Stine (counsel for the Company) then instructed the Secretary to tear up the shorthand notes of the meeting, and the Chairman confirming such instructions, the Secretary destroyed the same, Mr. Stine disposing of the fragments. The Chairman stated that such meeting was

null and void. The statement about the preliminary report above set fort was not ordered to be destroyed, and remained in the possession of the Secretary.

It being then 12:15, the attorney for the Company con- (101) vened the Secretary to an adjourned meeting, at his offices, 30 Broad Street, at 2 P. M., stating that the Commissioners desired his presence there. The Secretary then withdrew.

(Signed.) LEWIS M. HAUPT,
Chairman.

Commissioner for the Government.

(Signed.) HAROLD R. MILLER,
Secretary.

Thirty-Sixth Session.

(1014) Held at 30 Broad Street on Friday, the 22d of October, 1897, at 2 P. M.

At 2:30 P. M., the Secretary having been in attendance since 2 P. M., Prof. Haupt, Mr. Schraame and Mr. Stine appeared.

Prof. Haupt telephoned to Mr. Manuel H. Pena, Commissioner for the Government, who was at Mr. Robertson's office (Tel. 1571 Cortlandt) asking him to attend the meeting, and Mr. Haupt stating that Mr. Pena replied over the telephone that he did not consider himself a member of the Commission, the Chairman called the meeting to order, stating that they would proceed without him.

The CHAIRMAN: In submitting his tentative report to the Commission on October 15th, 1897, the Chairman did so in order that the Commission might have a guide in its deliberations, and not to have it understood as a final report in any sense, and now, since the debate has taken place in the previous sessions, and the various items have been discussed in full, it only remains for the Commission, or the majority of the same, to formulate its award.

Mr. SCHRAMME: In the first place, I wish to present a letter from the Counsel of the Cauca Company to me in reply to a letter of the Attorney for the Government to Commissioner Pena dated October 19th, 1897.

OCT. 19TH, 1897.

CHRISTIAN F. SCHRAMME, ESQ.

DEAR SIR,—I have been shown a letter dated Oct. 14th,

written by Francisco J. Cisneros, Esq., to Manuel H. Pena, Esq., and while I think that the case should not be rehashed, and efforts made to change the fair intendment of the evidence produced, by letters, I will nevertheless call your attention to one or two matters in connection with the subjects touched upon in Mr. Cisneros' letter.

(1015) In the first place, Mr. Cisneros again goes into the question of Mr. Carter's evidence in reference to the cost of construction. I thought that this had been amply covered by the stipulation which was entered into by the Government and the Company. It seems almost laughable to speak "of Mr. Carter adopting a higher rate in order to avoid unnecessary controversy on the subject." The evidence shows clearly that Mr. Carter's estimates were largely the figments of his own imagination, and the most that he ever claimed for them was that they were "estimates." On the other hand, the Company introduced its own books of account on this subject, and they certainly showed a very material difference between Mr. Carter's "estimates" and the actual amounts expended.

The Convention provides that the books shall be taken as the basis; it does not provide that Mr. Carter's "estimates" shall be taken as the basis of the award.

If Mr. Carter's figures as to the number of men employed from month to month are as accurate as his "estimates," the Commission will know what value to attach to both. Be this as it may, however, Mr. Carter's evidence is practically eliminated by the stipulation which was entered into by the Government and the Company in relation to certain items of construction, specified in the stipulation. These items which were not covered by this stipulation, such as supplies, cost of rebuilding the old road to Cordova, and finishing the unfinished portion of Cisneros' road, together with other items, are to be added to the agreed sum of $233,000 admitted by the Government, particularly so, as the Commission has already ruled that the Company is to receive back everything that was expended while the enterprise was in its hands, and not the agreed naked construction item of $233,000.

Mr. Cisneros further, by indirection, appears to object to Mr. Stine's fee and Mr. Schrammme salary as a Commissioner. In view of the fact that he claims that the disbursements of the Government will average between $70,000 and $75,000 per kilometre, it is a fair conclusion (1016) that the costs of this arbitration must be a difference between $64,671 per kilometre for 9,866 kilometres, which would be from $6,000 to $11,000 for each of the 9,846 kilometres, or from $54,000 to $99,000. Surely if

the cost of carrying on this arbitration to the Government is between $54,000 and $99,000 the charges of Messrs. Stine and Schramme, amounting to $17,200, are most modest. However, the Commission is the best judge itself of what the value of the services rendered by these two gentlemen before the Commissioners are worth.

What Mr. Cisneros has to say about the cost of railroads in the Argentine Republic and in the United States is very interesting, but in the language of the well-known chorus is: "The flowers that bloom in the Spring have nothing to do with the case." We might answer that the railroads in Venezuela built by the Krupp Syndicate, in the most econominal manner, cost over $70,000 gold per mile, but we will at the same time concede that this, too, "has nothing to do with the case." We might also add that the official figures of Colombian Government of the cost of the Cisneros road are $2,200,000. Further comment on this most attractive subject is unnecessary.

What Mr. Cisneros has to say in explanation of his statement, "that was the only wrong action of the Government," is "vastly fine." He did not mean that the Government had committed a moral wrong in forfeiting the railroad, but only that it had acted hastily, and that its procedure should have been different from what it was, and that he is now convinced that the Government acted perfectly right.

Well, this, too, "has nothing to do with the case." We prefer to think that Mr. Cisneros' first statement, coming as it did from him after he was thoroughly familiar with everything that had taken place for months and months previous to the time that he made this remarkable statement, was the mature and sincere conviction of an honest mind; that the niceties and subtle distinctions which have been introduced into this case by the learned and erudite (1017) counsel of Mr. Cisneros, Roderick R. Robertson, Esq., have perhaps tended to unsettle Mr. Cisneros' original conviction, and while it does not go to the root of the question, as to whether or not this Company is to be repaid what it has expended as well as its legal obligations, we, nevertheless, prefer to think that a man is supposed to know what the legal effect of language used by him is.

It seemed to the Company that, after all the evidence was in and after the very exhaustive summing up on both sides, that the Commissioners should have been allowed to make up their minds in peace, but by means of letters and in other ways the debate is kept up, new issues are attempted to be injected into the controversy, and new questions foisted upon the Commission.

I would respectfully suggest that you ask the Commission to confine itself not to the belated opinions of learned counsel on any of the mooted points, but that it proceed in its own way to reach such conclusions as it may seem just, from the evidence submitted.

Mr. Stine then produced a written draft of the Minutes of the 35th and 36th Session, which he read out from a typewritten paper, and, handing same to the Secretary, instructed him to insert same *of* the Record, which instructions were confirmed by the Commission. Said Minutes are as follows:

Thirty-fifth Session

Held at the Army Building, New York city, on Friday, October 22nd, 1897, at 11 o'clock A. M.

Present—Commissioners Haupt and Schramme.

The meeting adjourned to convene at No. 30 Broad street, New York city, at 2 o'clock P. M., of this date.

Thirty-sixth Session.

(1018) Held at No. 30 Broad Street, New York City, on Friday, October 22nd, 1897, at 2:30 o'clock p. m., pursuant to adjournment.

Present—Commissioners Haupt and Schramme.

On convening there was presented to the Commission a letter from Francisco J. Cisneros, the Attorney for the Republic of Colombia, of which the following is a copy:

NEW YORK, October 22nd, 1897.

MESSRS. LEWIS M. HAUPT & CHRISTIAN F. SCHRAMME:

GENTLEMEN—Being informed by Mr. Manuel H. Pena that he has resigned his office of Commissioner in the matter of the Arbitration of the controversy between the Cauca Company and the Republic of Colombia, I desire, on behalf of the said Republic of Colombia, to say that such resignation on the part of Mr. Pena has destroyed the autonomy of the Commission of which you and he were members, and that under such circumstances no further act on your part can have any force or effect as an official act on behalf of such Commission or as an official act of a Commissioner in said matter.

Yours very faithfully,

F. J. CISNEROS.

Concurrently with this letter there was delivered to the Commission a letter from Senor Manuel H. Pena, one of the Commissioners, enclosing copy of a letter addressed to His Excellency, The Minister of Hacienda, of which the following are copies:

(1019) October 22nd, 1897.

To the Secretary of the Colombia-Cauca Co. Arbitration Commission,
Clarendon Hotel, City:

Dear Sir—I beg to enclose you translation of a letter I have this day addressed to H. E. The Minister of Hacienda at Bogota, containing my resignation as a Member of this Arbitration Commission, which resignation, of course, takes effect from this date.

I shall esteem it a favor if you will kindly place the same before my Honorable colleagues at your next meeting.

Yours truly,
MANUEL H. PENA.

[Translation:]

October 22nd, 1897.

To His Excellency The Minister of Hacienda,
Bogota, Republic of Colombia:

In view of the fact that Lewis M. Haupt and Christian F. Schramme, both appointed as members of the Commission created pursuant to the Convention of January 4, 1897, to decide the controversy between the Cauca Company and the Republic of Colombia relative to the Cauca Railway, have declared their intention to allow to the Cauca Company very large amounts of money for alleged expenditures of the Company having no relation to either the construction expenses of the Company or the purchase of material on the construction of said Cauca Railway or for use thereon, and whereas the said Commision has not and never had jurisdiction to pass upon or allow such expenditures; and whereas, in my judgment, said Commissioners have departed from the terms of said Convention and propose to act in the matter of said controversy in a manner wholly beyond their official power as such Commissioners and to make an award upon matters which the parties to said controversy never intended to submit to their decision; and whereas, under the said circumstances (1020) I am convinced that it is my solemn duty to re-

fuse to act further with such Commissioners and to decline to remain a member of such commission until the illegal intentions of said Commissioners shall have been carried out, by the making on their part of a pretended award upon matters not submitted to said Commission.

I therefore beg to say that I hereby resign as a member of said Commission, such resignation to take effect at the moment of my signature hereto.

Dated at the City of New York, this 22nd day of October, 1897.

Thereupon Commissioner Schramme introduced the following resolution:

Whereas, by the terms of the Convention pursuant to which this Commission was created, it is provided in the Eighth Article thereof that:

"In order to carry into execution the proceedings fixed by this agreement, and to render its decision, the Commission shall meet in the place or places elected by it, and for such purpose shall have one hundred and fifty days counting from the instalation, which may be extended sixty days more in case justifiable grounds of delay shall arise;" and,

Whereas, this Commission met and organized on the 3d day of April, 1897, pursuant to the provisions of Article Fifteenth of said Convention, and has since that time heard the proofs and allegations on behalf of the respective parties to the said Convention, and has been attended by the attorneys and counsel for the respective parties, and has heard and considered their arguments, both oral and printed, and all of the members of this Commission appointed by the said Convention having participated in all of the said meetings which have heretofore been held; and,

Whereas, the time fixed by the said Article Eighth for the rendition of the decision of this Commission has been extended in pursuance with the provisions of said Article Eighth, and the said extended time will expire on the 31st day of October, 1897; and,

(1021) Whereas, all of the members of the said Commission have deliberated with respect to all of the matters submitted to it, and a conclusion was reached by the members of this Commission with respect to all of said matters prior to this date, but such conclusion has not as yet been formally announced; and,

Whereas, the attempt on the part of Senor Manuel H. Pena to resign from his position as a member of this Commission, and his refusal to act as a member thereof at this

time and under the aforesaid circumstances, and the concurrence in his action by the attorney for the Republic of Colombia, indicate that it will be impracticable to procure the appointment of another Commission in place of the said Pena, in the event that his attempted resignation is of any effect, so as to enable this Commission to render a decision within the time required by the aforesaid Eighth Article; and,

Whereas, by Article Fifth of said Convention it is provided that the said Commission shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves, and pursuant to said provision it was unanimously determined by this Commission, with the concurrence of the attorney for the Republic of Colombia and of the attorney for the Cauca Company, that all decisions to be rendered by this Commission and all differences of opinion should be settled by a majority vote, and that such decision should be final; and,

Whereas, the said Commission is now ready to make its formal decision, the terms of which were discussed between the various members of the said Commission, including the said Pena; and,

Whereas, the said Pena has been requested to attend at this meeting and to participate in the deliberations of the Commission, and has failed and refused to attend thereat:

Resolved, That this Commission proceed forthwith to make its award and to formulate its decision as to the matters involved in the said Convention.

(1022) Vote being taken upon this resolution, Messrs. Haupt and Schramme, constituting a majority of the said Commission, voted in favor of its adoption. Thereupon following decision and award was offered by the Commissioner Schramme for consideration and action:

To the Republic of Colombia, the Honorable John Sherman, Secretary of State of the United States of America, and the Cauca Company:

The Commission appointed under the convention of January 4, 1897, which convention was entered into between the Republic of Colombia and the Cauca Company, having been duly organized on April, 3rd, 1897, by all of the members appointed thereto, to-wit: Lewis M. Haupt, C. E. Manuel H. Pena, C. E., and Christian F. Shamme: and having had numerous sessions thereafter, at all of which the several members appointed by the said Commission were present and participated in the proceedings taken

before said Commission; and the said Commission and the aforesaid several members thereof, having examined the books of the Cauca Company with great care; and having heard all the witnesses produced by the Republic of Colombia and the Cauca Company, respectively; and having considered the arguments, both oral and written, and the various documents submitted for the consideration of the said Commission; and all of the said Commissioners having united in deliberating with respect to the matters submitted to it pursuant to the terms of the said convention; and the undersigned, constituting a majority of the said Commissioners, having reached the conclusion that the Cauca Company is entitled to be awarded the sum of four hundred and fifty-two thousand and forty-eight and 93-100 dollars (452,048.93) in gold coin of the United States of America in payment of its claim against the Republic of Colombia, which claim is the subject of the aforesaid convention;

(1023) Now, therefore, we, the undersigned Commissioners, constituting a majority of the aforesaid Commission pursuant to the authority vested in the said Commission under the terms of the aforesaid convention, hereby find that the Cauca Company is entitled to receive from the Government of Colombia on account of the matters referred to in said convention, including the moneys already paid by the Republic of Colombia to the said Cauca Company the sum of six hundred and fifty-two thousand and forty-eight and 93-100 ($652,048.93) in gold coin of the United States of America, of which sum the said Republic of Colombia has heretofore paid to the said Cauca Company the sum of two hundred thousand dollars ($200,000), leaving due and unpaid to the Cauca Company the sum of four hundred and fifty-two thousand and forty-eight and 93-100 dollars ($452,048.93) in gold coin of the United States of America, which sum we hereby award to the said Cauca Company, and which sum is to be paid by the Republic of Colombia to the said Cauca Company in the city of New York, on the 26th day of January, 1898.

The Republic of Colombia is also to pay as a special allowance as part of the costs incident to the said Commission to Attorney Marcus Stine, representing the Cauca Company, the sum of ten thousand dollars ($10,000) in gold coin of the United States of America on the said 26th day of January, 1898.

Commissioners Haupt and Schramme, a majority of the said Commission, thereupon voted in favor of the adoption of the said Decision and Award.

On motion of Commissioner Schramme, it was ordered,

that the said decision and award should be executed by the several Commissioners concurring therein, under their hands and seals, in quadruplicate, one of the said instruments to be delivered to Francisco J. Cisneros, the Attorney for the Republic of Colombia; another to the Charge d Affaires of the Republic of Colombia at Washington, D. C., Senor Don Julio Rengifo; another to the Hon. John (1024) Sherman, Secretary of State of the United States of America, and the fourth to the Cauca Company.

Thereupon the majority of the said Commissioners executed the said instruments and caused the same to be delivered in the manner aforesaid; and thereupon the meeting adjourned.

Mr. Stine then dictated the following resolution:

This Commission decides that the deliberations of the Commission shall not form part of the printed record, but shall remain in possession of the Secretary for future reference. The Secretary having pointed out that a resolution to the contrary had been passed at the 32nd Session of the Commission, the resolution was withdrawn.

After some delay Mr. Stine produced three copies of the proposed final award, and Mr. Samuel B. Guggenheimer, notary public, being in attendance, the three copies were duly authenticated, one copy being handed by Mr. Stine to the Secretary for delivery to Mr. Cisneros, which copy reads as follows:

To the Republic of Colombia, the Honorable John Sherman, Secretary of State of the United States, and the Cauca Company:

The Commission appointed under the convention of January 4th, 1897, which convention was entered into between the Republic of Colombia and the Cauca Company, having been duly organized on April 3rd, 1897, by all of the members appointed thereto, to-wit: Lewis M. Haupt, C. E.; Manuel H. Pena, C. E., and Christian F. Schramme, and having had numerous sessions thereafter, at all of which the several members appointed to the said Commission were present and participated in the proceedings taken before said Commission; and the said Commission and the aforesaid several members thereof having examined the books of the Cauca Company with great carse; and having heard all the witnesses produced by the Republic of Colombia and the Cauca Company, respectively; and having (1025) considered the arguments, both oral and written, and the various documents submitted for the consideration of the said Commission; and all of the said Commission-

ers having united in deliberating with respect to the matters submitted to it pursuant to the terms of the said convention; and the undersigned, constituting a majority of the said Commissioners, having reached the conclusion that the Cauca Company is entitled to be awarded the sum of four hundred and fifty-two thousand and forty-eight and 93-100 dollars ($452,048.93) in gold coin of the United States of America in payment of its claim against the Republic of Colombia, which claim is the subject of the aforesaid convention.

Now, therefore, we, the undersigned, Commissioners constituting a majority of the aforesaid Commission pursuant to the authority vested in the said Commission under the terms of the aforesaid Convention, hereby find that the Cauca Company is entitled to receive from the Government of Colombia, on account of the matters referred to in said Convention, including the moneys already paid by the Republic of Colombia to the said Cauca Company, the sum of six hundred and fifty-two thousand and forty-eight and 93-100 dollars ($652,048.93) in gold coin of the United States of America, of which sum the said Republic of Colombia has heretofore paid to the said Cauca Company the sum of two hundred thousand dollars ($200,000), leaving due and unpaid to the Cauca Company the sum of four hundred and fifty-two thousand and forty-eight and 93-100 dollars ($452,048.93) in gold coin of the United States of America, which sum we hereby award to the said Cauca Company, and which sum is to be paid by the Republic of Colombia to the said Cauca Company in the City of New York on the 26th day of January, 1898.

The Republic of Colombia is also to pay as a special allowance, as part of the costs incident to the said Commission, to Attorney Marcus Stine, representing the Cauca Company, the sum of ten thousand dollars ($10,000) in (1026) gold coin of the United States of America, on the 26th day of January, 1898.

In witness whereof, we have hereunto set our hands and seals this twenty-second day of October, in the year one thousand eight hundred and ninety-seven.

LEWIS M. HAUP. [Seal.]
Chairman.

C. F. SCHRAMME, [Seal.]

CITY AND COUNTY OF NEW YORK, } *ss.*:

On this twenty-second day of October, in the year one thousand eight hundred and ninety-seven, before me per-

sonally appeared Lewis M. Haupt, of the City of Philadelphia, and Christian F. Schramme, of New York City, to me known, and known to me to be the persons described in the foregoing instrument, and who severally acknowledged that they executed the same.

SAML. H. GUGGENHEIMER,
Notary Public,
New York County.

At 5:15 P. M. the chairman declared the meeting adjourned *sine die*.

(Signed.) LEWIS M. HAUPT, Chairman.

Commissioner for the Company,
HAROLD R. MILLER.

HAROLD R. MILLER, Secretary.

(1027) NOTE.—Copies of the minutes of the 35th and 36th Sessions as handed to the Secretary for publication at the 36th Session were forwarded by the Secretary to Messrs. Haupt and Schramme on the 23d October. On the morning of the 26th, when all the above matter was in print, the Secretary received the following letter and enclosure from the Chairman:

"Oct. 24, 1897.

"Dear Mr. Secretary:

"Please find herein the minutes of our final meetings approved with a slight modification which I submitted to Mr. Schramme.

"We regret that we have been deprived the pleasure of the company of our colleague at this last act, but trust we may have the pleasure of meeting him prior to his return, as also Mr. Cisneros.

"I have the Barney folios which you left here; can you conveniently call & file them with other papers, if you desire. Can you give me full set of printed minutes, &c., by Wednesday?

"Very truly yours,

"L. M. HAUPT."

"Thirty-fifth Session, held at the Army Building, New York City, on Friday, October 22nd, 1897, at 11 o'clock A. M.

"Present: Commissioners Haupt and Schramme and the Secretary.

"The Chairman stated that, at the opening of the

Commissioners' deliberations, there was objection to make such deliberation public, and that Mr. Pena should have the advantage of submitting his arguments and the full discussion to His Excellency the President of Colombia, in order that his record might be entirely clear in the premises; but in publishing the record the Chairman does not desire to depart from the usual legal precedent, and will, therefore, divide his report in two parts, one relating to the scope of the Convention, giving his reasons and his conclusions (1028) thereof, and the other, in the nature of suggestions to the Commission as to what items should be considered, is not to form a part of the record, but is merely intended to serve as a guide to the Commissioners' deliberations. He wishes, therefore, to close his tentative report with the page 12, which he begs to substitute herewith.

"The Secretary submitted two letters, one from Mr. Cisneros, addressed to the Commission, and the other from Mr. Pena to the Secretary, which were read and, and it was decided to adjourn the meeting until a later hour to give the matter due consideration.

"Approved,

"L. M. HAUPT,
"Chairman."

(Signed) HAROLD R. MILLER.

HAROLD R. MILLER,
Secretary.

Law 16, 1890, Cherry Contract.

(1029) REPUBLIC OF COLOMBIA "DIARIO OFICIAL."

BOGOTA, Monday, October 20, 1890. Number 8,215.

LAW 16 OF 1890.

(October 18th.)

Ratifying the contract made an the 27th day of August, 1890, for the construction of the railway from Buenaventura to Manizales.

THE CONGRESS OF COLOMBIA.

Upon the contract for the construction of the Cauca Railway, which is literally as follows:

"Contract number 20, granting the concession to construct and operate a steam railway between the port of Buenaventura, in the Department of Cauca, and the city of Manizales, in the Department of Antioquia, passing *via*

Cali, made between the Government of Colombia and Mr. James L. Cherry.

"Upon Law 144 of November 26th, 1888, whereby powers are given to the Government relating to the construction of the Cauca Railway and the Government making use of such powers, and especially such to which section 2 of article 4 of said Law relates;

"We, the undersigned,

"Ruperto Ferreira, Under-Secretary of the Department of Public Works of the Republic of Colombia, temporarily in charge of the Department, being duly authorized by His Excellency the President of the Republic, of the one part, hereinafter in this contract denominated 'the Government,' and of the other part James L. Cherry, domiciled at San Francisco, California, in the United States of America, hereinafter styled 'the Concessionary,' have made the contract set forth in the following paragraphs:

(1030) "Art. 1. The Government of the Republic of Colombia grants to the Concessionary, who accepts the same, the exclusive privilege to construct and operate a steam railway on the line included between the port of Buenaventura, on the Pacific Ocean, in the Department of Cauca, and the city of Manizales, in the Department of Antioquia. It is understood that the line of the road shall, in any event, be made by way of Cali, in the Department of Cauca. Also, the preferential right, under like circumstances, for a line practicable to that part of the Atrato navigable for vessels of deep draught of those that navigate the Atlantic Ocean or the North of the Gulf of Darien, and a like right, under like circumstances, to construct the railway from Cali to the Ecuador line with a branch to Popayan, in the Department of Cauca.

"Art. 2. The railway aforesaid shall, for the purposes of this contract, be considered as divided into two sections, that is to say: First. That included between the port of Buenaventura and the city of Cali. Second. The line from Cali to Manizales. The Concessionary binds himself to begin and to complete, in the first place, the construction of the first (1st) section, and upon completion thereof to begin the construction of the second (2nd) section; in whole or in part whenever the necessities of traffic shall require, the decision in regard to which shall be made by common accord between the Government and the Concessionary.

"Art. 3. For all legal effects the construction of the railway to which the preceding articles relate is declared to be a work of public utility; and, therefore, the Conces-

sionary shall have all the rights and rights of action that the law concedes to enterprises of that class.

"Art. 4. The construction of the road shall be commenced formally within four months, counting from the date of the execution of this contract; and the first (1st) section of the line shall be completed and opened to traffic within the preemptory period of four years, counting from such date, except in case of fortuitous circumstances or *vis* (1031) *major*. After beginning the work, it shall be continued without interruption, unless prevented by *vis major* or fortuitous circumstance, and save and except the case of delays occasioned by the Government and unavoidable by the Concessionary.

"Art. 5. The final working plans for the line of the second section shall be made within the period of six months counting from the respective dates when it is decided to begin, in whole or in part, the construction of such section. The formal work of construction on the said second section shall be commenced within the period of six (6) months counting from the date last mentioned. The construction on the second section having been begun, shall be continued without interruption and be completed five years after the initiation thereof, except in the case of *vis major* or fortuitous circumstance intervene and force the suspension thereof, or in case delay be occasioned by the Government, unavoidable by the Concessionary.

"Art. 6. The plans, profiles and maps of the line shall be made in duplicate; one copy shall be forwarded to the Government through the Department of Public Works, and the other shall be kept in the main office of the Company at Cali. Both on the plans and elsewhere in everything relating to the enterprise the official standard of measurements of the Republic shall be used.

Art. 7. The Government of the Republic guarantees to the Concessionary interest at the rate of five per cent. (5%) per annum upon the first section and four and one-half per cent. (4½%) per annum upon the second section during the period of eighteen (18) years, upon the basis fixed, stipulated and accepted by both parties, of thirty-eight thousand dollars ($38,000) in American gold to each kilometre of the railroad constructed. Such interest shall be payable in American gold, or the equivalent in any other money, and shall be computed at the end of each year upon the average of kilometres of railroad constructed and put in operation. The interest is secured by the number of kilometres of rail-

road constructed and put in operation during the period of eighteen (18) years from the time of construction. It is (1032) understood for the purposes of this article that the construction shall be carried forward continuously from one of the termini of the road to the other, so that no interest shall be paid by the Government for isolated portions of the road constructed until such parts be connected and open for operation. Notwithstanding this, the Government will allow, if it be deemed advisable, the simultaneous construction of two of more different lines binding itself to the guarantee as fixed for the continuous line.

"Art. 8. The guarantee of five per cent. (5%) per annum to which the last preceding article relates shall be computed on the part of the railroad construction between Cordova and Buenaventura and which is to be delivered to the Concessionary in accordance with the provisions of article 33 of this contract on the basis of eight thousand dollars ($8,000) in American gold to the kilometre, and shall include the time calculated from the termination of the work on the first section to the expiration of eighteen (18) years to which the last preceding article refers.

"Art. 9. The Government is not to pay any interest or the expenses incurred for the preliminary plans and final tracing of the line, as such expenses are considered to be part of the construction work in which the amount thereof must be included. The construction track, side tracks and all other accessories required by the railway shall be likewise included in each kilometre, so that whatever be disbursed on such work shall also bear no more interest and have no greater guarantee than that which corresponds to the kilometre where the same are found.

"Art. 10. The Government secures the payment of the interest aforesaid by one-half of the gross revenues from the duties on importation collected at the custom houses of the Republic of Colombia on the Pacific, and shall have the right to issue bonds or drafts to the order of the Concessionary redeemable from such half of such duties. The amount of such interest, liquidated annually to the credit of the Concessionary or of his legal representatives, shall (1033) be paid during the month of January of each year by order of the Government in drafts against the national bank of the Public Treasury. In case payment of such drafts be delayed, the Government shall, during such delays, pay interest thereon at the rate of ten per cent. (10%) per annum on sums due and not paid. Such indebtedness shall be considered as acknowledged and with the right of

preference. Non-payment of interest shall be considered to be one of the cases set forth at the end of Article 5.

"Art. 11. The present concession relates to a railway of a single track with the curves of service, side tracks, stations and all else necessary for operating, but the Concessionary shall nevertheless, from the beginning of the work, make allowance of sufficient ground and so arrange the work that a double track can be laid whenever necessary and ordered by mutual accord between the contracting parties. The Concessionary reserves the right to substitute steam by electricity or any other motive power in case the advance in the art make such substitution preferable.

"Art. 12. The line shall be one metre in width between rails on its entire length, and the Concessionary shall, therefore, at the proper time, change that part of the railroad already constructed, which he is to receive in conformity with the contract.

"Art. 13. The Concessionary binds himself to suitably arrange that the use of such public or private roads as cross the line or which may be taken for use so that passage thereupon shall not be unnecessarily interrupted or made dangerous by reason of the railway.

"Art. 14. The railway with its curves of service, side tracks, bridges and wharves, shall be constructed in a durable manner of good material, so that it shall furnish security to passengers and shall have sufficient locomotives, freight cars and special cars for first and second class passengers. The Concessionary binds himself that such passengers, effects and merchandise as are entrusted to him for transportation shall be carried with care, punctuality and speed, and that he will maintain the road and the fa-
(1034) cilities for traffic in good condition and in no event inferior to such as are now in existence on the part constructed and that during time of war he will not allow the use of the railway to persons and things the transportation of which may be prohibited by the Government, save and except in the case of *vis major*.

"Art. 15. In case the services of the railway, in whole or in part, be interrupted for any length of time by any cause which the Concessionary can avoid and shall not apply all the means at his command to re-establish the same, the Government after hearing the Concessionary and after it be clearly proven that all the means at his command have not been applied to repair the damage, shall

have the right to order the repairs to be done for account of the Concessionary.

"Art. 16. Such fixed plant, rolling stock, tools, dynamite, bridges, telegraphic material, plates of galvanized iron and mechanical apparatus for loading and unloading vessels as may be imported for the construction, operation and good service of the railroad and its appurtenances, shall be exempt from duties of importation and exempt from any other national, departmental or municipal taxes, upon first presenting at the custom houses the respective invoices in each case. The railway and all its accessories and appurtenances shall also be exempt from such taxation and any and every forced loan, exemption and contributions of war.

"Art. 17. The term of the Concession by this contract granted to the Concessionary shall be seventy (70) years, counting from the date of its approval by His Excellency the President of the Republic. Upon the termination of such term the railway with all its fixed plant, rolling stock, bridges, wharves, stations and other accessories and appurtenances, all in good working condition except the natural deterioration of wear and tear, shall become the property of the Government, and shall be delivered to it under inventory and without payment to the Concessionary.

(1035) During the period of the Concession, the Concessionary shall be under the obligation to maintain the railway in good working condition, and the Government shall have the right, if it deem it best so to do, to appoint, at its expense, commissioners to report in that regard.

"Art. 18. In order to fix the net revenue of the railway to make the computation of the interest guaranteed by the Government, the gross annual proceeds computed in national currency shall be discounted by the sum of three thousand dollars ($3,000) to the kilometre of road in use, which amount shall be taken as the total sum of the expenses of administration, maintenance and exploitation of the line, whatever may be the actual amount of such disbursements. Hence, if the gross proceeds should not amount during the year to the sum of three thousand dollars (3,000) to the kilometre, or equal that amount only, the Government shall pay to the Concessionary the total sum of the guaranty as fixed in Article 7; and if they should be more the Government shall pay the only difference, if any there be, to the time of the termination of the said guarantee at the date stipulated thereof.

"Art. 19. The right of way granted for this Concession shall be forty (40) kilometres on each side of the line, and within such right of way no other railway shall be constructed during the term of the Concession without the consent of the Concessionary or his legal representatives; but it is understood that this inhibition shall not be so intended as to prevent the crossing of the right of way by other lines that do not parallel it. And such railways shall not have the right to transport passengers, baggage or freight within the right of way granted by the consent of the Concessionary.

"Art. 20. In case the Government order or authorize the construction of railways or canals that cross the line included in this present Concession, the Concessionary shall not have the right to oppose such work, but all necessary means shall be made use of in order that therefrom (1036) shall not result any obstacle of any kind to the construction and operation of the railway nor any expense soever to the Concessionary. And such enterprises shall be subject to the provisions of the last clause of Article 19.

"Art. 21. The Government shall have the right to appoint at its own cost, if it deem best so to do, employees or special commissioners charged with the examination of construction work, the line or the accounts of the railway, and whenever it so does the Concessionary shall facilitate such commissioners to such extent as may be possible in the execution of their duties. The report in detail of the results of the working of the road, including the receipts and disbursements that effect the revenues of the railway during the eighteen (18) years of the guaranty of interest, shall be forwarded weekly to the Minister of Public Works for his examination and approval, this being necessary for the liquidation of the guaranty to which Article 7 relates; but whenever the revenues of the railway be sufficient to cover such guaranty, the Concessionary shall not be under obligation to present its accounts nor permit the examination thereof.

"Art. 22. The Concessionary shall have the right to have adjudicated to him preferentially, in conformity with legislation in that regard, such mines or mineral deposits as may be discovered in the right of way granted, and such coal mines as are on said right of way in lands of the Government, with the right to use and dispose of the products thereof free from payment of national, departmental or municipal taxes.

"Art. 23. The Concessionary shall have the right preferentially, under like circumstances, to the adjudication of unappropriated lands within the limits of the right of way granted. In case of adjudications the same shall be made in conformity with the provisions of law in forms relating to the matter and the Concessionary binds himself to work such lands as he may acquire as directed in such provisions.

"Art. 24. The Concessionary shall have the right of preference, under like circumstances, in case new proposals (1037) be presented for the construction of a railroad to connect the alto Magdalena with the alto Cauca and also for the construction of a line starting from the last of the lines mentioned in Article 1 to the navigable waters of the Putumayo River within the territory of Colombia.

"Art. 25. As security for the performance of the obligations contracted, the Concessionary is to deposit in the hands of such person as for such purpose may be designated by the Government at New York the sum of fifty thousand dollars ($50,000) in American gold or the equivalent thereof in other money before the twenty-seventh day of October next.

The Government shall return such sum to the Concessionary as soon as the latter shall legally prove that he has constructed a part of the road, the value whereof shall be equivalent to the sum of two hundred thousand dollars ($200,000) in American gold.

"Art. 26. During the time that such sum to which the last preceding article relates shall remain on deposit the Government shall have the right to freely dispose thereof or leave the same on deposit; in the first case it shall pay therefor to the Concessionary at the expiration of every six (6) months, yearly interest thereupon at the rate of five per cent. (5%) in American gold or the equivalent thereof; in the second case the Concessionary shall only receive whatever the bank where the same is deposited may allow on such deposit.

"Art. 27. The Government, without expense to the railway, shall furnish such police or military force as may be necessary for the protection and safety of the persons and property of the employees, workmen, &c., during the continuance of the concession. The employees of the railway, but not the peons, shall be considered national police agents for the service of the railway, but they shall be exempt from military service or any other private subsidiary, onerous or of forced acceptance.

"Art. 28. The Government, without cost to the Concessionary, shall furnish such rights of way and lands ne-
(1038) cessary for the railway and its accessories of any kind and to such extent as may be required for the road and its appurtenances, but only when it can be done by unappropriated lands. In all cases the Government will, at the expense of the Concessionary, *ex*propriate such lands owned by private owners as may be necessary for the road and its appurtenances. The Concessionary shall have the right to freely take from the national lands such wood, stone, and other materials for construction purposes as may be required for work upon the railway.

"Art. 29. The Concessionary shall have the right to take a copy of all such plans, gradings as estimates as may have heretofore been made in connection with the railroad to which this contract relates and which are owned by the Government.

"Art. 30. The Concessionary shall have the right to construct such ports, wharves and landing places as may be necessary for the service of the railway, and for such purposes shall have the use, without compensation, of such national lands as may be required for construction, or as may be necessary for extension, provided they be of the same class. The Concessionary shall also have the right to establish such telegraph and telephone lines as may be necessary for the service of the railway, subject, however, to such regulations or dispositions as may have been made or may be made by the Government in the premises relating to such matters. Until the time of completion of the railway the Concessionary shall have the right to the use, without compensation, of the national lines for whatever may relate to the railway.

"Art. 31. The Concessionary shall be at liberty to fix the rates for freight, passage and transportation during the first five (5) years of the concession, after which the same shall be fixed by common accord with the Government, and may be modified in like manner; but in no avent shall the same be less than those now in force, except with the assent of the Concessionary. The prices of the rates shall be fixed only in current national money.

(1039) "Art. 32. All regulations made by the Concessionary or his legal representatives for the service of the railway must be subject to the approval of the Government.

"Art 33. The Government assigns and transfers to the Concessionary, or to his legal representatives gratui-

tously, and by way of subsidy during the period of the concession the use of the present railway between the port of Buenaventura and Cordova, known as the Cauca Railway, with all its fixed plant and rolling stock, buildings, utensils, tools, cuts, gradings, accessories, and appurtenances. Upon making delivery thereof the kilometers of railroad constructed received by the Concessionary shall be measured off for the purposes of Article 8th, and a note of the number thereof shall be made in the proper proceeding. The delivery of the Cauca Railway shall be made to the Concessionary at the latest fifteen days after the date on which formal work upon the construction of the line shall be begun.

"Art. 34. This present concession shall not be assigned to any government or foreign nation, but may be transferred to any individual, company or corporation of a private character upon giving notice thereof to the Government of the Republic.

"Art. 35. The Concessionary shall fix his domicile in any city in Europe or America which he may see fit to elect for such purpose; but in case he shall not select Bogota he shall keep at the said city an agent vested with sufficient authority to deal with the Government in everything relating to this contract.

"Art. 36. Troops and employees of the Government, when travelling on duty under express orders of the Government, military stores and mail bags belonging to the said Government shall be transported by the railway at fifty per cent. (50%) less than fixed rates. Material owned by the Government, such as that pertaining to telegraphs, tools used for purposes of instruction, etc., shall pay one-half (½) only of the charges for transportation fixed by the rates.

(1040) "Art. 37. Both the Concessionary and such person or persons to whom this contract may be assigned shall in relation to this contract be subject to the provisions of Article 15 of Law 145 of 1888, under which such contracts as are made in Colombia between the Government and foreigners, whether individuals or companies, shall be subject to the law of Colombia, and the rights and obligations springing from such contracts shall be interpreted exclusively by local judges and tribunals. In case, for any reason, the Government declare the concession to be forfeited, the Concessionary, or whoever may represent him, shall have the right to submit the matter to the decision of two experts, one to be appointed by the Government and

the other by the Concessionary, and such experts shall appoint an umpire for the case of disagreement. The decision of the arbitrators or of the umpire by them appointed shall be final and unappealable. All questions or matters of difference arising between the Government and the Concessionary in relation to this contract shall be decided upon the application of either of the parties by the Supreme Court, except in relation to the declaration of forfeiture of the concession. It is, therefore, an express condition of this contract that the Concessionary shall renounce, as in fact he does renounce, the initiation of any claim by diplomatic channel relative to the rights and obligations springing from the said contract except in case of denial of justice.

"Art. 38. In case the Concessionary completes the first (1st) section before the date stipulated in article 4, the Government shall deliver to him as a premium such titles to unappropriated lands, which can be adjudicated in any part of the Republic, on the basis of one thousand (1,000) hectares for each month of anticipation of the completion of the section aforesaid.

"Art. 39. The present concession and the consequent obligations of the Government shall be forfeited in any of the cases following:

1. Whenever the Concessionary shall fail to comply with any of the obligations contracted by him in articles 4, 6, 25, 34, 35 or 37.

(1041) 2. Whenever construction work be suspended or the exploitation be abandoned for more than six consecutive months.

Express exception is made of the application of this article in such cases of fortuitous circumstances and *vis major* as may arise and are duly proven.

In case of forfeiture of the concession for any of the causes hereinbefore set forth, all work that may have been done shall become the property of the nation, as well also such sums as at the date of the declaration thereof may be deposited as security by the Concessionary.

"Art. 40. This contract shall require for its validity the approval of his Excellency, the President of the Republic, as well as the approval of the national Congress, if that honorable body deem it necessary.

In witness whereof we sign in duplicate of like tenor, at Bogota, the 27th day of August, 1890.

RUPERTO FERREIRA.
JAMES L. CHERRY.

"National Government—Bogota, August 27th, 1890.

"Approved.

CARLOS HOLGUIN

The under-Secretary of Public Works in charge of the Department.

"RUPERTO FERREIRA."

DECREES:

Art. 1. Let the contract for the construction of the Cauca Railway, made at this capital on the 27th day of August, of the present year, by His Excellency, the Minister of the Department of Public Works, Doctor Ruperto Ferreira, and Mr. James L. Cherry in his own behalf, be approved with the following amendments:

Article 22 shall be as follows:

"Art. 22. The Concessionary shall have the right to have adjudicated to him by way of preference under like circumstances, in accordance with legislation in that regard, such mines or deposits of mineral as he may discover in the (1042) right of way granted on unappropriated lands and such coal mines as are on such right of way and on such lands, with the right to use and dispose of the products therefrom, exempt from the payment of national, departmental or municipal taxes.

Article 31 as follows:

"Art. 31. The Concessionary shall be at liberty to fix the rates of freight, passage and transportation during the first five (5) years of the concession, after which term the same shall be fixed by agreement with the government and same may be changed in like manner; but in no event shall the same be less on the entire line of each section than now charged between Buenaventura and Cordova unless by consent of the Concessionary.

The prices of rates shall be fixed only in current national money.

Art. 2. The Executive shall have the power, by agreement with the Concessionary, to modify articles 8 and 12, of this contract, in the sense that the entire line constructed shall have a width between rails to that part now constructed between Buenaventura and Cordova. In order to make use of this authority the Executive must obtain from the concessionary a reduction in the price fixed for each kilometre in article 7, in accordance with what he may deem

equitable for the decrease in cost of construction and the greater facilities such change implies. In case such change be made the guaanty of five per cent. (5%) per annum, to which article 8 relates, shall not be had as to the part now constructed.

Thus done at Bogota, the 16th day of October, 1890.

The President of the Senate, J. F. INSIGNARES—The President of the House of Representatives, J. M. DOMINGUEZ—The Clerk of the Senate, ENRIQUE DE NARVAEZ—The Clerk of the House of Representatives—MIGUEL A. PENARENDONDA.

(1043) THE EXECUTIVE DEPARTMENT, Bogota, October 18, 1890.

Let the same be published and carried into execution.

[L. S.] CARLOS HOLGUIN.

The Under-Secretary of the Department of Public Works in charge of the Department.

RUPERTO FERREIRA.

Appointment of Senor Pena.

(Translation.)

DECREE NO. 2 OF 1897.

(11th January.)

By which an appointment is made.

The Vice-President of the Republic, in charge of the Executive Power,

In view of the Convention entered into under date of the 4th instant, between the Government and Mr. James L. Cherry, Representative and Attorney of the Cauca Company, and in compliance with the provision of Article 14 of said Convention,

DECREES:

Senor Manuel H. Pena is hereby appointed a member of the Commission that is to determine the indemnity to which the Cauca Company is entitled according to aforesaid Convention.

Given at Bogota on the 11th day of January, 1897.

MANUEL ESGUERRA,
Minister of the Treasury.

M. A. CARO.

(1044) **Appointment of Mr. Schramme.**

To the Minister of the Treasury, Present:

In my capacity as Attorney in fact, Representative and Manager of the Cauca Company, and agreeably to the provisions of Article XIV. of the Convention of 4th inst., by which the differences pending between the Government of Colombia and the Company I represent were settled, I beg leave to inform your Excellency that on behalf of said Company I have appointed Mr. Christian F. Schramme as a member of the Commission, which is to decide the matter according to aforesaid Convention.

Trusting that this appointment may prove satisfactory to your Excellency,

I have the honor of subscribing myself,

Your very obt. serv't,

J. L. CHERRY,

Attorney of the Cauca Company.

Bogota, January 5th, 1897.

TREASURY DEPARTMENT—

BOGOTA, 11th January, 1897.

Mr. Christian F. Schramme is hereby recognized as a member of the Commission referred to in the Convention of 4th inst., on behalf of the Cauca Company.

MANUEL ESGUERRA, Minister.

Appointment of Prof. Haupt.

Know ye, That whereas, by Articles of Agreement between the Government of Colombia, of the first part, and James L. Cherry, General Manager, representative and attorney of the Cauca Company, organized in New York to effect the construction of the Cauca Railway, (1045) signed in the city of Bogota, on the 4th of January, 1897, it was stipulated in settlement of the differences which had arisen between th. contracting parties that the amount of indemnity to be paid by the former to the latter, in consideration of the surrender of the railway aforesaid, with its equipment and stock, shall be determined by a Commission of three members, one to be appointed by the Minister of Finance of Colombia, another by the Attorney of the Cauca Company, and the third in common accord by the Secretary of State of the United States of America and the diplomatic representative of Colombia in Washington.

And whereas, the diplomatic representative of Colombia in Washington did, on the 8th day of March, 1897, communicate to the Secretary of State of the United States an authenticated copy of the aforesaid articles of Agreement and requested the co-operation of the Secretary of State in the choice of the third member of the Commission to be appointed under said Articles of Agreement.

Now, therefore, we, John Sherman, Secretary of State of the United States of America, and Julio Rengifo, Charge d'Affaires, *ad interim*, of the Republic of Colombia, having conferred with respect to the selection of such third member of the Commission to be organized in pursuance of said Articles of Agreement, have made choice of and do hereby appoint as such third member of said Commission, Lewis M. Haupt, a citizen of the United States, residing in Philadelphia, Civil Engineer, to perform the service and duty which may be required of or devolve upon him by reason of the stipulations contained in the aforesaid Articles of Agreement, between the Government of Colombia and the Cauca Company, signed January 4, 1897.

In witness whereof, we have signed and sealed this instrument in triplicate original in the city of Washington, this 18th day of March, in the year of our Lord, 1897.

JOHN SHERMAN, [L. S.]
JULIO RENGIFO, [L. S.]

Appointment of Mr. Stine.

(1046) NEW YORK, April , 1897.

This is to certify that Marcus Stine, by a unanimous vote of the directors of the Cauca Company, was duly appointed its representative and attorney, to act for it and in its behalf in such capacity before the Commission appointed under the Convention of January 4th, 1897, between the Colombian Government and the Cauca Company.

HENRY A. RICHARDSON,
President of the Cauca Company.

Appointment of Mr. Cisneros.

(Translation :)

BOGOTA, 17 February, 1897.

To the Chairman of the Special Commission that is to decide in the matter pending settlement between the Government of Colombia and the Cauca Company.

NEW YORK.

I hereby have the honor of apprising you that Senor Don Francisco J. Cisneros, who will hand you the present communication, has been appointed by the Government of the Republic as its Represensative and Attorney before the Special Commission of which you are the worthy chairman, and that he has been invested with the powers necessary for the discharge of his duties.

I improve this opportunity to subscribe myself.

Your very obedient servant,

JUSTINIANO CANON,
Under Secretary of the Treasury,
in charge of the Department.

(1047) CLAIM OF THE CAUCA CO.

EXPENDITURES UNDER CONSTRUCTION ACCOUNT OF THE CAUCA CO.

Dr.

1890.			Voucher.		
Nov.	3.	D. Van. Nostrand Co., Stationery	1		8 75
Dec.	30.	Mecke & Co., Sundries	2		185 19
1891.					
Jan.	31.	T. N. Motley & Co., Tools, &c	3		1,295 57
Feb	2.	Acker Merrill & Condit, Supplies	4		116 00
	10.	Wakeman & Co., Supplies	5	95 55	
		Talmage & Sons "		290 94	
		Lidgerwood Co., Hoisting Engine		634 75	
		Kemp, Day & Co., Supplies		409 94	
		Holt & Co., "		30 00	
		Mattlage, "		422 50	
		Holmes & Coutis, "		36 12	
		Boyce & Hartshorne, "		65 33	
					2,045 13
	16.	T. N. Motley & Co., R'd Material	6		2,797 67
Mch.	7.	Office Expenses	No		25 00
	22.	D. M. Williams, Beds, Towels &c			22 80
Apr.	14.	Lanman & Kemp, Medical Supplies	7		72 30
May	1.	Keffel & Esser Co., Engine Supplies	8		520 48
	1.	Collins & Co., Axes & Machetes	9		110 78
	7.	Freund & Co., R'd Supplies	10		92 55
	7.	Dreher & Co., Lubricant	11		121 31
	7.	Motley & Co, R'd Material	12		2,542 64
	7.	Lanman & Kemp, Medical Supplies	13		100 37
	7.	Bazar du Voyage, Supplies	14		76 50
	18.	Mossman, Safe	15		85 00
	18	Baldwin Locomotive (Cauca)	16		7,267 50
	18.	J. W. Mason & Co., Beds & Cots	17		41 30
	18.	Motley & Co., Saws	18		125 80
	18.	Rendrock Powder Co., Explosives	19		453 49
June	1.	Barkley, Stationery	20		29 50
July	1.	H. B. Claflin & Co., Supplies	21		194 00
		Deano Sons, "	"		200 08
		O. Meyer & Co., "	"		105 00
		Wiehl & Widman, "	"		39 00
		Fay Bros, "	"		162 50
		Amount carried fwd			18,836 30

(1048)		Amount brought fwd				18,856 30
1891.			Voucher.			
July	11.	Scoverling D. & G. Winch	22	102	70	
		Mason & Co., Furniture	"	48	50	
		Thurber, Whyland & Co., Supplies	"	80	93	
		Randrock Powder Co., Explosives	"	403	98	
		Motley & Co., Rd. Material	"	439	65	
		Holbrook Bros., Rd. Material	"	18	05	
		Lanman & Kemp, Medical Supply	"	124	20	
		W. H. Kay, Iron Nuts	"	43	82	
		Fickey, Stationery	"	48	93	
		Smith & Nichols, Tallow	"	57	12	
		Holt & Co., Supplies	"	156	25	
		Witthoff, Chas., Supplies	"	90	00	
		Ficker, Stationery	"	154	05	
		Wilcox Co., Lard	"	180	18	
		Higbie, Smith & Co., Supplies	"	27	30	
		Pacific Mail S. S. Co., Freight	"	612	16	
						2,605 22
		Consul Fees	"	17	40	
	17.	H. B. Clafflin & Co., Supplies	23	36	33	
		McGovern & Co., Supplies	"	30	90	
		Collins & Co., Axes	"	109	88	
		Youmans Supplies	"	10	00	
		Scoverling D. & G., Arms	"	35	42	
		Boyle & Co., Tents	"	92	12	
		Motley & Co., Rd. Material	"	179	68	
		Pacific Mail Freights	"	1,687	40	
		E. H. Kellogg & Co., Oils	"	41	25	
		Russell & Erwin Co., Forges	"	36	60	
		Consul Fees	"	16	00	
		Consul Clerk making out Invoices	"	8	00	
						2,283 67
Aug.	1.	Ladenburg, Thalman & Co., Rails	24			22,333 85
	8.	McGovern & Thompson, Supplies	25	82	27	
		Consul Fees	"	25	00	
		O. Meyer & Co., Supplies	"	52	50	
		Wakeman Supplies	"	52	64	
		Talmage Sons, Supplies	"	60	87	
		Amounts carried fwd		273	28	46,059 04

1891.						
(1049)		Amounts brought fwd.....		273 28	46,059 04	
Aug.	8.	Merck & Co., Medical Supplies....	25	2 95		
		Merck & Co., " "	"	10 50		
		Higbie, Smith & Co., Supplies....	"	54 60		
		Fickey, Stationery.....	"	83 46		
		Pacific Mail S. S. Freights.....	"	249 80		
		Russell & Erwin, Rd Material ...	"	73 03		
		Leggett & Co, Supplies.....	"	841 50		
					1,589 12	
	17.	John Boyle & Co., Rd. Material...	26	9 44		
		Cross & Begenlin Rd. Material..	"	53 75		
		Siegmund Robinow, Explosives....	"	3,150 87		
					3,214 06	
May	7.	Hartley & Graham, Arms.....	27	.....	45 78	
Aug.	21.	N. Y. Stencil Works Stamps, &c..	28	36 90		
		Rochester Lamp Co., Rd. Material	"	15 19		
		Leggett & Co., Supplies.....	31	44		
		Consul Exp's & Inv.....	"	25 00		
					108 53	
	21.	Motley & Co., Rd. Material.....	29	120 50		
		Russell & Erwin "	"	54 33		
		Pacific Mail Freight	"	170 63		
		W. Cook & Co., Rd. Supplies....	"	100 30		
		J. W. Mason & Co., "	"	70 35		
		Rendrock Powder Co., Fuse.....	"	35 73		
		East River Lead Co., Paint	"	55 22		
		Ficker, Stationery	"	114 26		
		McKesson & Robbins, Medical Sup's	"	98 60		
		Russell & Erwin, Rd. Material....	"	160 09		
					960 01	
Sept.	1.	Wiehl & Widmann, Supplies.....	30	32 50		
		Higbie, Smith, "	"	30 23		
		Columbian Foundry Brake Shoes..	"	33 95		
					96 68	
	19.	Pacific Mail Co, Freight.....	31	135 50		
		Tide Water Oil Co	"	64 00		
		McGovern & Th, Supplies.....	"	48 00		
		Consul Fees & Exp's.....	"	15 00		
					263 40	
	21.	Rendrock Powder Co, Explosives	32	71 40		
		Gerstle & Bros., Oil.....	"	72 62		
		Russell & Erwin, Rd. Material....	"	286 17		
					430 19	
		Amount carried fwd.....			52,786 81	

1891.						
(1050)		Amount brought fwd.....				52,786 81
		J. W. Pethard, Engineer	33		100 00	
		General Expenses as per voucher.	"		1,813 52	
		Office Expenses as per voucher....	"		312 50	
		Rent Account as per voucher	"		62 50	
		Salary Account as per voucher ...	"		7,803 66	
						10,242 18
Oct.	10	Pacific Mail Co., Freight	34			118 48
	20.	C. F. Schramme, Trav. Exp., Bogota.....				1,137 24
	28.	Talmage Sons, Supplies.....	35		146 68	
		Lanman & Kemp, Medical Supplies	"		23 70	
		Ru-sell & Erwin, Rd. Material....	"		92 78	
		N. Y. Stencil Co , Stamps.....	"		14 25	
		Rendrock Powder Co , Explosives	"		307 39	
						584 80
		Office Expenses, Sundries.....				12 60
Nov.	24	W. D. Barkley, Stationery.....	36			3 50
	30.	Ladenburg, Thal. & Co., Cables.				12 44
Dec.	9.	Motley & Co., Consul Fees.....	37			5 00
	10.	Passage to Panama.....	38			45 00
	28.	Office Expenses, Sundries.....				50 31
1892.						
Jan.	5.	S. C. Schramme, Passage & Exp.	39			200 00
	31.	Traveling Exps., Washington	40		140 75	
		Atlantic Mut'l Ins., Insurance....	"		251 25	
		Motley & Co., Rd. Material.....	"		235 28	
		Rendrock Powder Co., Fuse.....	"		43 12	
		W. D. Barkley, Stationery.....	"		27 17	
		Smith, Trav. Exps., Washington..	"		100 00	
						797 57
Mch.	31.	Motley & Co , Rd Material.....	41			440 00
Apl.	25.	Anthony, Supplies.....	42		25 40	
		Keuffel & Esser Co , Engineer's Sups.....	"		597 95	
		Pacific Mail Co., Passage Enginrs	"		576 00	
		Burgess, Expenses.....	"		36 00	
						1,235 35
	26.	Pacific Mail Co., Pass. & Freight	43			213 93
	26.	Subscription to Herald.....	44			18 75
May	10.	Hartley & Graham, Arms...	45		96 86	
		Mattlage, Supplies.....	"		92 19	
		Kemp, Day & Co.....	"		124 09	
		Amount carried fwd			313 14	65,919 41

(1051)

1892.				
	Amount brought fwd		313 14	67,919 41
May 10.	Kenuffel & Esser Co., Engineers. Sups	45	12 00	
	Holmes & Coutts, Supplies	"	51 24	
	Acker, Merrall & Co., Supplies	"	22 00	
	Roberts Bros., Tents	"	280 64	
	Wilcox Lard Co., Supplies	"	22 57	
	Santariet Co, Paint	"	205 90	
				907 49
14.	Motley & Co., Rd. Material	46	883 19	
	W. D. Barkley, Stationery	"	40 05	
	Lanman & Kemp, Medical Supplies	"	146 31	
				1,069 55
20.	Mason & Co. Furniture	47	91 40	
	Motley & Co., Rd. Material	"	342 15	
	J. H. Lan & Co, Blast'g Caps	"	550 00	
				983 55
June 2.	Motley & Co, Rd. Material	48		367 34
21.	Motley & Co., "	49	1,180 18	
	Talmage & Sons, Supplies	"	156 83	
	Keuffel & Esser, Eng. Sps	"	58 66	
	Kemp, Day & Co, Supplies	"	124 20	
				1,519 87
30.	Bates & Co., Telephone	50	308 52	
	Marcial & Co., Cement	"	184 80	
	Tide Water Oil Co., Oil	"	27 00	
	W. D. Barkley, Stationery	"	42 90	
	Rochester Lamp Co., Lamps	"	34 74	
				597 96
30.	Lanman & Kemp, Med Sup	51	5 74	
	Motley & Co., Rd. Material	"	1,324 25	
				1,329 99
30.	Collins & Co, "			434 65
30.	Swan & Finch, Oil	53		253 51
July 6.	Cofrode & Saylor, Abutments for Bridge	54		1,289 23
11.	Pacific Mail Co. Freight	55	"	368 75
25.	W. D. Barkley, Stationery	56		7 80
31.	J. L. Cherry, Trav. Eps	57		934 49
Aug. 9	Pacific Mail Co., Freight	58		1,814 81
	Cofrode & Saylor, Iron Bridge	59		6,500 00
20.	Keuffel & Esser Co., Engineers Sups	60		101 86
	Motley & Co., Rd. Material	61		807 05
	W. D. Barkley, Stationery	62		63 30
	Amount carried fwd			87,270 71

(1052)

1892.					
	Amount brought fwd.....				87,270 71
Aug.	20. Thurber, Whyland Co., Supplies	63	81 95		
	C. F. Mattlage, Supplies.....	"	41 00		
					122 95
	29. Pacific Mail Co., Passage, Bridgemn.....	64			288 00
	31. Office Expenses, See Petty Cash Bk.....				359 25
	Office Expenses, Cables.....				41 41
	Office Rent.....	65			271 75
Apr.	23. Ridley Sons, Supplies	66			11 22
Sept.	10. Pacific Mail Co., Freight.....	67			155 04
	Jackson & Sharp, Passenger Car	68			2,525 00
	13 Motley & Co., Rd. Material.....	69			283 00
	Rendrock Powder Co., Explosives.....	70			673 29
	20. Pacific Mail Co., Freight	71			558 86
	27. Cofrode & Saylor, Iron Bridge..	72			5,000 00
	29. Pacific Mail Co., Passage.....	73			144 00
	30. Pacific Mail Co., Freight.....	74			1,345 78
	Bazar du Voyage, Supplies.....	75			25 00
	Tide Water Oil Co., "	76			44 20
Oct.	3. Motley & Co., Rd. Material....	77	439 56		
	Hartley & Graham, Arms.....	"	34 10		
					473 66
	13. Ricketts & Banks, Assaying....	78			31 60
	7. Western Electric Co., Insulators	79	17 28		
	Keuffe & Esser Co., Eng'rs Sups	"	138 76		
	Freund & Co., Rd. Watches....	"	135 62		
					291 66
Nov.	10. W. D. Barkley, Stationery.....	80			6 00
	21. Pacific Mail Co., Freight	81			385 06
	23 Thurber, Whyland & Co., Supplies.....	82	180 51		
	Mattlage, Supplies	"	38 75		
	Rendrock Powder Co., Explosives.....	"	649 36		
	Motley & Co., Rd. Material....	"	1,308 47		
					2,177 09
Dec.	10. Pacific Mail Co., Freight.....	83			237 01
	19. Motley & Co., Road Material....	84			1,266 75
	23. Paid to Bridgemen.....	85			285 80
	27. Swan & Finch, Oils.....	86			109 35
	Amount carried fwd.....				104,383 44

(1053)

1892.		Amount brought fwd.....				104,383 44
Dec.	31.	Murphy, Engineer.....	87		15 00	
		Spencer, Bridgeman.....	"		668 22	
		F. L. Schramme.....	"		550 00	
		R. Burgess, Engineer.....	"		690 25	
		F. Wilson.....	"		600 00	
		Nounman.....	"		300 00	
		R. O. Campo.....	"		1,136 51	
		Office Expenses, see Petty Cash	"		63 00	
		Rent Office.....	"		56 25	
		Legal Services.....	"		3,156 70	
						7,236 03
	31.	Legal services.....				147 00
		J. L. Cherry, Salary June 30, '91, to Apr. 30, '92.....			5,000 00	
		J. L. Cherry, Salary May 1, '92, to Dec. 31, '92			8,000 00	
						13,000 00
		C. F. Schramme, Salary Apr. 30, '92, to Dec. 31, '92.....			4,800 00	
		C. F. Schramme, Salary Aug. 31, '91, to Apr. 30, '92.....			2,400 00	
						7,200 00
		S. C. Schramme, Salary Oct. 1, '91, to Dec. 31, '92.....				1,025 00
		Stine & Calman, Salary July 31, '92, to Dec. 31, '92.....				2,500 00
1893.						
Jan.	31.	Atlantic Mutual Ins., Insurance	88		250 00	
		Mining News Pub. Co.....	2		5 25	
		Pacific Mail Co., Passage S. C. S.	"		72 00	
		Traveling Exps., S. C. Schramme	"		100 00	
		W. D. Barkley, Stationery.....	"		10 30	
						437 55
Feb'y	28.	Office Rent.....	89		56 25	
		Pacific Mail Co., Freight.....	"		557 39	
		Jackson & Sharp, Trucks	"		1,900 00	
		W. D. Barkley, Stationery....	"		7 80	
		Keuffel & Esser Co., Eng'rs Suppl.....	"		19 57	
		Thurber, Whyland Co., Supplies	"		198 94	
		Western Electric Co.....	"		12 82	
		Motley & Co,. Rd. Material....	"		1,157 98	
		Wesrern Union Tel. Co., Cables	"		42 51	
						3,953 26
Mch.	20.	Travelling Exps., S. C. Schramme				75 00
Apr.	5.	Michael, Salary Bridgeman....	90		130 00	
						130 00
	6.	McLeod, " "	91		130 00	
		Hart, Salary, "	"		130 00	
						260 00
		Amount carried fwd.....				140,347 28

(1054)

1893.		Anount brought fwd			140,347 28
May	1.	Atlantic Mutl. Ins., Insurance	92		250 00
Sept.	30.	F. Wilson, Engineering Work			200 00
		F. Wilson, Engineer	93	100 00	
		Murphy, Engineer	"	7 08	
		Hart, Bridgeman	"	216 55	
		Wilson, Engineer	"	100 00	
		Murphy, "	"	597 15	
		Wilson, "	"	277 65	
		Boyle, "	"	257 07	
		Wilson, "	"	100 00	
		J. L. Cherry & C. F. Schramme, Trip to Europe	"	2,500 00	
		Office Expenses	"	160 00	
		Office Rent	"	112 50	
		Legal services	"	100 00	
					4,528 00
Dec.	30.	Office Expenses	94	50 00	
		Office Rent	"	56 25	
					106 25
	31.	J. L. Cherry, Salary for 1893			12,000 00
		C. F. Schramme, Salary for 1893.			7,200 00
		S. C. Schramme, Salary for 1893.			1,375 00
		Stine & Calman, Salary for 1893.			2,500 00
1894.					
May	11.	Motley & Co., Rd. Material	95		1,060 45
		Rendrock Powder Co, Explsives	96		324 68
		Santariet Co., Paint	97		126 84
	19.	Keuffel & Esser, Repair Transit.	98		42 25
June	8.	Motley & Co., Rd. Material	99		1,350 00
	9	W. D. Barkley, Stationery	100		27 70
	19.	Colombian Line Freight	101		120 00
	22	Marquardt & Co., Cement	102		81 20
July	19.	Motley & Co., Rd. Material	102	3,500 00	
	21.	" "	"	775 00	
	24.	" "	"	878 27	
					5,153 27
Aug.	14.	Hegedorn & Co, Insurance	104		39 00
	27.	Santariet Co., Paint	105		108 00
Sept.	11.	Motley & Co, Rd. Material	106		783 25
Oct.	29.	Hegedorn & Co., Insurance	107		5 10
		Amount carried fwd			177,728 27

(1055)

1894.		Amount brought fwd				177,728 27
Dec.	31.	Drafts drawn on this office by Buenaventura Office	108	143,431 18		
		Office expenses	"	551 78		
		Rent of Office	"	112 50		
						144,095 46
	31.	C. F. Schramme, Salary 1894				7,200 00
		J. L. Cherry, " "				12,000 00
1895.						
May	27.	Motley & Co., Rd. Material	109			309 90
		W. D. Barkley, Stationery	110			29 60
	31.	Office Expenses				551 18
July	12.	Motley & Co, Rd. Material	111			191 60
	15.	Expenses, Washington, Amberg & Green				272 50
Sept.	30.	Amount of Deposit with Colombia Govt. returned in Libranzas to Buenaventura Office and there it was expended in construction		50,000 00		
		Office Expenses		23 00		
						50,023 00
Oct.	8.	Motley & Co., Rd. Material	112	412 64		
Nov.	4.	Motley & Co., " "	112	283 09		
						695 73
	7.	Sundries				97 59
	10.	Repairs				4 00
	27.	Wm. Waddell	113			78 00
	27.	Ponce de Leon, Services	114			50 30
Dec.	31.	Int. paid Loans	115	597 32		
		Office Expenses	"	213 50		
						810 82
	31.	J. L. Cherry, Salary 1895				12,000 00
		C. F. Schramme, " "				7,200 00
		S. C. Schramme, " "				126 42
1896.						
Mch	24.	Colombia Line, Freight	116			5 00
Apr.	7.	Mossman, Safe	117			85 00
	9	Colombian Line, Freight	118			168 95
		Rendrock Powder Co., Explosives	119			40 93
		Santariet Co., Paint	120			56 75
		Barkley, Stationery	121			75 80
	10.	Motley & Co., Rd. Material	122			383 51
		Amount carried fwd				414,280 51

(1056)

1896.					
		Anount brought forward			414,280 51
Apr.	10.	Consul fees	123		16 00
	23.	State West Virginia, taxes	124		100 00
	28.	Office Rent	125		33 34
May	1.	Moving Safe & Furniture	126		27 00
	11.	Motley & Co., Rd. Material	127		593 30
	12.	Consul Fees & Freight	128		53 00
	22.	Freight on Cattle Car	129		393 38
June	3.	Due J. L. Cherry for Transfer of Concession as per contract 29th November, 1890			135,000 00
		J. L. Cherry & C. F. Schramme Sundry Traveling expenses as per voucher	130		18,348 93
		Office Rent	131		33 34
	25.	C. F. Schramme, Trav. Expenses			50 00
	29.	Hartley & Graham, Arms	132		53 92
July	3.	Smith Worthington, Supplies	133	70 40	
		Goodyear Rubber Co., Supplies	"	8 00	
					78 40
	6.	Creamer & Co	134		3 75
	13.	Evening Post Subscription	135		5 00
Aug.	3.	Office Rent	136		33 34
July	3.	"	137		33 34
Sept.	4.	"	138		33 34
Oct.	1.	"	139		33 34
Nov.	2.	"	140		33 34
Dec.	1.	"	141		33 34
	31.	J. L. Cherry, Interest on Balance			9,515 95
		Office Expenses			155 00
		J. L Cherry, Salary, 1896			12,000 00
		C. F. Schramme, " "			7,200 00
		S. C. Schramme, " "			780 00
1897.					
Jan.	4.	Office Rent	142		33 34
Feb.	2.	"	143		33 34
	16.	Acker, Merrall & Co., Supplies	144		98 40
		Amount carried fwd			599,085 94

(1057)

1897.					
		Amount brought fwd			599,085 94
Feb.	16	J. L. Cherry & C. F. Schramme, Travelling Expenses and Sundries, Trip to Bogota			11,460 00
Mch.	3.	Office Rent			33 34
	10.	Compensation to J. L. Cherry and C. F. Schramme for services rendered and loss of time on two trips to Bogota			50,000 00
	31.	J. L. Cherry, Sundry Expenses and Interest			9,125 40
		C. F. Schramme, Jan. 1st to Apr. 1st			1,800 00
		S. C. Schramme, Jan. 1st to Apr. 1st			195 00
Apr.	3.	Office Expenses, Petty Cash			40 00
	3.	Interest on Capital Stock paid in $250,000 from Oct. 15, '90, to Apr. 3rd, 1897—6 years, 5 mos., 19 days at 6 per cent	97,041 66		
	3.	Interest on Bonds amounting to 264,500 from Mch. 1, 1893, to Apr. 3rd, 1897—4 years, 1 mo., 3 days at 6 per cent	64,934 75		
					161,976 41
					833,716 09
Apr.	3.	Liabilities of the Cauca Co., sold 6 per cent. bonds	264,500 00		
		Received in cash 50 per cent. and accounted for in construction	132,250 00		
		Remainder due to Bondholders and to be paid by the Cauca Co			132,250 00
					965,966 09

Cr.

(1058)			
1891.			
Dec.	4.	Amberg. For Maps	6 00
	31.	Interest on Balances in Bank	521 67
1893.			
June	14.	Return Premium of D by Atlantic Mut. Ins	170 45
May	29.	Transfer of Scrip At. Mut. Ins. to C. F. Schramme	200 00
Sept.	30.	Interest on Balances	103 85
Dec.	30.	DeMilt, Payment on Subscription	04
1894			
July	6	Rebate on Freight	30 00
Aug.	3.	" " "	72 88
Sept.	27	" " "	37 50
	30	R. R Bauer, Return Cash	286 80
Dec.	31.	Remittance by Buena. Office	1,012.51
		Interest on Balances	65 65
1897.			
Mch.	31.	Return over credit to J. L Cherry	1,020 00
		By Balance	962.438 74
			965,960 09
		To balance brought down	962.438 74

E. & O. E.

New York, April 3rd, 1897.

Mr. Stine's Letter on the Meaning of the Words Obras Y Trabajos. (Extract)

Copy. April 28th.

Dear Professor Haupt.—I beg to acknowledge receipt of your letter of April 27th, with inclosures, and in answer would say that your Memorandum of Account meets our views in all respects, and is entirely satisfactory in the form submitted. I shall turn the same over to the Company for payment at once.

I have also read with interest the letter which you have mailed to several well known philologists and linguists, and will be much obliged if you will submit their replies, when received, to the Commission.

(1059) I would, however, venture to call your attention to the fact that, after all, what the Commission desires is to do substantial justice, and that while a difference of opinion may exist as to the literal and purely verbal meaning of the words "*obras y trabajos*," as compared with the broader or secondary meaning, nevertheless, in order to ascertain the intention of the contracting parties, the preliminary contract to which reference was made in the last session of the Commission, and which Mess. Pena and Cisneros did not have in their possession (but which I will see that they are supplied with promptly), together with testimony as to the negotiations which led up to the final contract, will go far towards establishing in the minds of the Commission, what the real intention was.

Is it probable that the Cauca Company would ever undertake to make a contract of indemnification which contemplated that they should be reimbursed only for rails, ties, bridges and road-bed construction? Had this been the intention of the parties would not the contract have stated in specific terms that all other expenses incident to the carrying on of a great work should be specifically excluded in making the award? It is not possible to conceive of an indemnity which is to repay the promoters of a great enterprise that which, every one knows to be only a part of the expenditure, for no project of the kind under discussion can be carried on without administration, executive and other expenses, and if this had been the intention of the contracting parties that such expenses should not be paid, a clause in the contract would undoubtedly have expressed this in clear and unequivocal terms. It would have read something like this:

The Commission is to determine what the amount expended by the Cauca Company has been for material, rolling stock, etc., but it is distinctly understood by and between the contracting parties that the Cauca Company shall not make a claim for any other expenses such as clerk hire, engineer's salaries, salaries of officers, lawyers' fees, etc.

(1060) What the Government had in mind can be shown by the tectimony, first, of Mr. Schramme; second, of the United States Minister to Colombia, Mr. McKinney; third, by the evidence of linguists; and fourth, by the internal evidence of the contracts themselves.

It is the more surprising that Mr. Cisneros should undertake to give the narrow construction to the words "*obras y trabajos*" which he claimed for them before the Commission, in view of the fact that he himself, on a previous occasion, was in exactly the same position that the Cauca Company was in, when the first twenty kilometers

of this very road was taken away from him by the Government ofColombia.

Yours very truly,
MARCUS STINE.

Mr. Cisneros' Reply to the Foregoing.

New York, May 17th, 1897.

To the Members of the Commission that is to decide in the the Matter of the claim of "The Cauca Company" against the Government of Colombia.

GENTLEMEN: On the 28th April ultimo, Mr. Marcus Stine, Attorney of the Cauca Company, wrote a letter to Professor Lewis M. Haupt, the arbitrator of said Commission, a copy of which letter Mr. Stine also forwarded to me, with the purpose of demonstrating that the interpretation given by me to the words "*trabajos y obras*," is too restricted. Said representative thinks that what the Government had in mind when compromising the controversy with the Cauca Company, in accordance with the Convention of January 4th, 1897, will be proved by the testimony of Messrs. Schramme and McKinney, by the evidence of linguists and by the internal evidence of the contracts themselves. And in order to prove that the Convention of (1061) January 4th, does not say what is clearly expressed by its articles, he asks that the Bases agreed upon by the Minister of State, be taken into account. In substance these Bases do not differ from said Convention of January 4th., but I reject them in the most absolute manner for the simple reason that I have before me the contract of agreement, which, being sufficiently clear, can be cancelled by no other. In said Bases, the words "*trabajos ejecutados*" were translated as "enterprise" instead of as "completed works," the difference therefore appears in the translation only and not in the Spanish text of the agreement. In the Convention itself, the words "*trabajos ejecutados*" were substituted by the words "*trabajos y obras*" which mean in English, "works and structures".

That the object of the Government has always been to limit the price agreed to the disbursements made there upon the spot, can be observed in the contract of October 20th, 1890. Thus, for instance, in Article 7 the Government agrees to guarantee the interest of 5% on $35,000 gold, as the price of every kilometer, and in Article 9 it is set forth that: "The Government will allow no interest whatever on the expenses occasioned by the preliminary

studies and final surveys of the line, for these works are considered as part of the construction in which its value should be included. In like manner the lines in operation, sidings and other appurtenances required by the Railway, are to be understood as forming part of each kilometer of track so that no further interest and guarantee shall be allowed for these works beyond what corresponds to the kilometer where they are found"

The distinguished representative of the Cauca Company says: "It is not possible to conceive of an indemnity which is to repay the promoters of a great enterprise that, which everybody knows to be only a part of the expenditure, for no project of the kind under consideration can be carried on without administration, executive and other expenses, and if it had been the intention of the contract-
(1062) ing parties that such expenses should not be paid, a clause in the contract would undoubtedly have expressed this in clear and unequivocal terms. It would have read something like this: "This commission is to determine what the amount expended by the Cauca Company has been for material, rolling stock, etc., but it is distinctly understood by and between the contracting parties that the Cauca Company shall not make a claim for any other expenses such as clerk hire, engineers salaries, salaries of officers, lawyers fees, etc."

But it occurs to me, in this connection, that I can employ exactly the same argument, as follows: Should the idea of the contracting parties be that the Commission is to grant the Cauca Company all the moneys they stated to have been expended on the construction of the railway, most decidedly they ought to have inserted in the contract a clause to that effect because such an explanation would become necessary in order to convince the Commission that in addition to the "*trabajos y obras*," all the other expenses not chargeable to "*trabajos y obras*" should also be paid by the Government.

The very contract of January 4th, 1897, proves that the words "*trabajos y obras*" were intended to restrict the concession to the works executed, for Article 6 of same reads: "The Government of the Republic of Colombia and the Company empower the Commission to be formed in the manner already pointed out to fix or adjust the hereinbefore mentioned indemnity, and for this purpose said Commission shall appraise the "*obras y trabajos*" (Structures and works) referred to. It is evident that in the estimate or valuation of works (*trabajos y obras*) nobody in his right mind could claim that stock, discounts, lawyers fees, transfer of concession, etc., could be included. These are

incidental expenses chargeable to the whole enterprise and not to the works. With regard to the works, there are some incidental expenses of a technical and administrative nature which are directly chargeable to said works, and do come under the valuation referred to in Article 5, and (1063) against these incidental expenses I have no objection to make nor do I propose to raise any.

Consulting upon this point, a Spanish dictionary especially devoted to Railways, entitled "*Vocabulario descriptivo de Ferrocarriles*," by Don Mariano Matallano, on page 102, we read the following in reference to Railway tracks:

"The works (*trabajos*) upon a line may be of study, construction, maintenance, preservation and vigilance."

And under the head of "*obras*" (structure) the same author gives this definition:

"Any construction—the amount of work done in a construction. In roads the term is applied to walls, gutters or conduits, drains, culverts, pontoons, bridges, viaducts and tunnels."

I could here close my disquisition upon this subject if my purpose were only to merely glance over it; but I desire to act conscientiously in the matter and be sure that the course I am pursuing and the view I take are thoroughly correct. I have therefore prosecuted my inquiries further.

I have consulted Messrs. Olcot Mestre & Gonzales, experts upon the subject, and I subjoin their opinion:

"In accordance with your instructions, we send herewith a translation made by us from the Spanish into the English language of the Agreement for the settlement of the differences existing between the Republic of Colombia and the Cauca Company in connection with the contract for the construction of the Cauca Railway.

Replying to your inquiry as to the use of the word "operations" in connection with the translation of the Spanish word "*trabajos*," which is repeatedly used in the original of the translation herewith sent and the law of 1890, we have to make the following remarks:

"It is a palpable and salient error to use the English word "operations" as the proper translation of the Spanish word "*trabajos*" in connection with the subject matter of the Agreement referred to. In that Agreement the two words "*obras y trabajos*" are used side by side in several of its articles. These words are used (1064) with a distinct technical signification both in the Spanish and French languages. The Spanish word "*obras*" is used in the French language in the word "*œuvres*" any

such word as used in both languages is applied in the sense of that which is a completed entity; it is a generic term covering a complete whole or what is to be a completed whole when terminated. These words, thus used, with a distinct signification in both Spanish and French are purely technical, since the same definition for both words may be found in both dictionaries. Hence it is absolutely impossible to translate such words into the English language by any one single word, but they can be designated together as "work of every kind." In the language referred to the signification and application may be summarized in the following manner; that is to say, the word "*obras*" or "*œuvres*" applies more directly to that which is constructed above the surface of the ground, while the word "*trabajos*" refers to that which is worked in or from the ground. In other words, the breaking of the ground, preparation of embankments, laying out of the line of a railway, all are generally comprehended under the word "*trabajos*," while the laying of the rails on or above the surface, the construction of bridges, the erection of buildings and anything that is above the surface of the ground is more properly included within the definition of the general term "*obras*." So, too, the entire construction work would be an "*obra*" but the work being done separately would be "*trabajos*" (work) on the "*obra*," (entire work). The English word "operations" has nothing to do with a definition of what has already been described because used in the same techical language applicable to a railway it indubitably means the operation, that is to say the exploitation or working of the road itself. A reference to Webster's Dictionary, or the Standard Dictionary, will bear this out, apart from the knowledge any one should have of the technical application of the word to a railway. Thus, see Webster's Dictionary, the word "operation," "the act or process of operating; the method of working." The (1065) Standard Dictionary gives it "the act or process of operating; the state of being in action." It is because of the impossibility to respectively translate by any single word in English the words "*obras*" and "*trabajos*" that we find ourselves obliged to translate them, whenever the words "*obras*" and "*trabajos* were found in the original Spanish document, submitted to us for translation, by the words in English "work of every kind done." The word "operation" in English does not apply to a road in condition of construction, because a road cannot be operated until it is actually constructed. In dealing with a railway the technology of a railway alone is applicable and there should be no mistake as to what is

meant by the word operation. Construction work is to be completed before the operation of a road is commenced and we see no reason whatever for the use of word "operation" as a translation of the word '*trabajos*.' "

Although the reply of these gentlemen is quite satisfactory viewed from my standpoint, I have deemed it advisable to further impress the Commission with the justice of my view, by discussing, not what the words "*trabajos y obras*" mean in English, but what they mean in Spanish, this being the language in which the Contract was written. And in order to get at their real signification it was necessary to find out what they originally meant. Knowing the solid and scientific accomplishments of his Excellency the Vice-President of the Republic, who gives to every word its true and exact signification, neither more nor less, I have pursued the meaning of the wrods "*trabajos y obras*" to their very fountain head. I have for this purpose availed myself of the services of Mr. Francisco J. Amy, Professor of the Spanish language, and here is his able answer:

"In our last interview you requested me to undertake such philological researches as would facilitate the correct interpretation of the Spanish expression "*trabajos y obras*," and in its relation to engineering constructions, (1066) and I now have the pleasure of submitting to you the result of my labor in this direction.

"The etymology of words, as sanctioned by recognized authorities, is no doubt of the utmost importance in determining their correct meaning."

"Consulting these authorities, I find in the first place, that the dictionary of the Spanish Royal Academy gives as the origin of "*trabajos*", the Gothic word "*dreiban*", to impel, to exercise; while the reputed philologist, Roque Barcia, in his excellant work, "*Sinonimos Castellanos*", holds that it comes from "*traba*" (fetters, shackles), which, in its ter*m*, proceeds from the Latin *traben*, *trabs*", (a beam), whence "*trave*" (a wodden fence to confine an unruly horse or ox while shoeing). From the same source sprung the Provencal "*trabalh*," "*trebail*" (labor, toil, torment); the French "*travail*"; the Portuguese "*trabalho*" and the Italian "*travaglio*", all of which, in common with the Spanish "*trabajo*", mean fatigue, labor, pains taken in doing anything. Originally the Italian "*travaglio*," according to Littre, meant the trevail or work of the horse shoer and thence "torment", its primary sense.

"Other derivations of the word have been advanced by different philologists; for instance, Ferrari thinks that it is

an off-shoot of the Latin "*tribulum*" (a harrow), whence "tribulation". Sylvius is of opinion that it comes from "*transviglia*" (vigil), (Insomnia); Muratori and others are disposed to believe that it is derived from the Italian "*voglio*" (a sieve). The Italian verb "*travagliare*" would thus properly signify to shake. Wackter resorts to the Cymric "*trafod*" (labor); others, less adventurous, to the Gælic "*treabh*" (to plow); while Webster himself, or rather the International Dictionary, suggests the probability of the word being derived from the low Latin "*trepalium*" (a place where criminals are tortured, instrument of torture)."

"However, I find that the most generally accepted etymology is the one which traces the origin of the word to the Latin "*trabs*". Thus we see that in the same man-
(1067) ner as "*travail*", or the more archaic "travel" (labor, toil, torment) in English, and its French, Portuguese and Italian similars, all proceeding from the common source, the Spanish word *trabajo* in its primary and fundamental sense is inseparably linked to the idea of bodily or physical exertion and pain.

"Taken in connection with engineering works, *trabajo*, in the plural, is invariably used to designate the rough manual work done by laborerers (*trabajadores*), under the direction of overseers, with special reference to the preparation of the grounds on which the proposed structure is to rest; while *obras* (works) is applied to the structure itself. In confirmation of this view we have the authority of the best Spanish lexicographers, who define the verb *trabajar*, in its architectural sense, thus: "*Sostener alguna cosa a otra o mantenerla*," which literally translated reads: "To support or maintain one thing by another;" while, on the other hand, *obra* (work), is thus defined by the same authorities: "*Cualquier cosa hecha, creada o producida por algun poder o agente.—Construccion de arquitectura, albanileria, carpenteria, etc.—Dicese comunmente de los edificios que se estan fabricando o construyendo*"; Which corresponds to the definition,given in the same connection to "work", in its plural form, by all the English lexicographers, viz: "An entensive engineering structure, as a dock, bridge, fortification, or the like."

TEXT OF SOME OF THE AUTHORITIES QUOTED.

Travail, n, (F. *travail*; *cf.* Pr. *trabalh*, toil, torment, torture; probably from L. L. *trepalium*, a place where criminals are tortured, instrument of torture. But the French word may be akin to L. *trabs* a beam, or have been

influenced by a derivative of *trabs* (*cf. trave*) *Cf. travel.* 1—Labor with pain; severe toil or exertion.—WEBSTERS' INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE.—1892.—Page 1532.

The Century Dictionary and Cyclopedia, 1897, gives more or less the same definition.

(1068) *Travail, travayl, travel, travell* (Fr. *travail*), toil, labor, fatigue, a trave for horses, from Lat. *trabem*, accus of *trabs*, a beam; *cf.* Ital. *travaglio;* Sp. "*trabajo*;" Port. "*trabalho.*"—(1) An obstacle or impediment. (2) Toil, labor; O. Ital. "*travaglio*, a pen for cattle; Wel. "*trafael*" travail, labor, toil. "*Travail*" and "*travel*" are doublets.

1. Labor with pain; severe exertion, toil—THE ENCYCLOPEDIC DICTIONARY. SYNDICATE PUBLISHING CO. Philadelphia.

Travail—Etym. Wallon, "*trava*," "*travail du marechal; provence*, "*trabalh trebalh*" "*trebail*," fatigue; esp. *Trabajo*. fatigue; Ital. "*travaglio, travail de marechal et fatigue. Il est impossible de saparer* "*travail*" *des merechaux et* "*travail*" *peine, fatigue, pour la forme, ni meme pour le sens; car, de* "*travail*" *qui assujettit les animaux, on passe sens peine a* "*traval*," *gene, sens primordial* (*travail de labors, Job. 454*) "*Travail*" *se* "*tire*" *du prov.* "*travar*," *entravar, du latin* "*trabs*," *poutre.*—LITTRE.—DICTIONAIRE DE LA LANGUE FRANCAISE. Paris.

Travail—Dies et Cherallet ne croient pas devoir sortir du domaine latin et voient tout simplement dans "*travail*" *un rejeton du verbe* "*trvar*," *varreler, empecher, d'ous le francais* "*entraver.*" "*Travar*" *procede d'un substantif latin* "*trabs*," *poutre;* "*travar*" *c'est proprement mettre des batons dans les roues, traver; de la se degage l'acception* "*contrarier*" "*tourmenter.*" *Application des forces que ptoduit la fatigue; labeur, peine qu'on se donne pour faire quelque chose*—LAROUSSE —DICTIONAIRE DU XIXME. SIECLE.—Paris.

Worcester gives more or less the same etymology.

Trabajo:, de "*trabajar*" *del gotico* ("*dreiban*") *impeler, ejercitar.*—DICCIONARIO DE LA REAL ACADEMIA. ESPANOLA.

Trabajar.—Arquit: Sostener alguna cosa a otra y mantenerla.—DICCIONARIO ENCICLOPEDICO DE LA LENGUA

(1069) ESPANOLA. ORDENADO POR DON NEMESIO FERNANEEZ CUESTA. Madrid 1873.

Works (Pl.) Structures in civil, military or naval engineering, as docks, bridges, embankments, trenches, fortifications and the like; also structures and grounds of manufacturing establishments as iron "works;" locomotive "works;" gas "works."—WEBSTER'S INTERNATIONAL DICTIONARY, 1892, page 1664.

Works. Specifically applied to an extensive engineering structure, as a dock, bridges, embankments, fortification, or the like.—THE ENCYCLOPEDIC DICTIONARY. Syndicate Publishing Co., Philadelphia.

Obra—Cualquier cosa hecha, creada o producida por algun poder o agente. Escrito cientifico o literario de cualqier clase que sea.—Construccion de arquitectura, albanileaia o carpinteria. Dicese de los edificios que se estan fabricando o componiendo.—DICCIONARIO ENCICLOPEDICO DE LA LENGUA ESPANOLA, *ordenado por* Don Nemesio Fernandez Cuesta. Madrid, 1872.

Trabajo. Work, working, task, toil, labor, occopation, laboring.—PONCE DE LEON.—TECHNOLOGICAL DICTIONARY. Vol. II. Spanish-English.

CLAIMANT'S EXHIBITS.

PAPERS SIGNED BY NEW YORK, CHICAGO AND PHILADELPHIA PARTIES FOR BUILDING THE CAUCA RAILROAD.

(1070) Chicago, June 26, 1896.

To Messrs. James L. Cherry, and C. F. Schramme:

Dear Sirs: We have been informed that in lieu of the contemplated arrangement to acquire the Cauca Railroad by purchase, the Colombian Government may request our Company to complete the same to Cali. Now, if this proves to be so, you are authorized to consummate an arrangement to that end on behalf of the Company providing the Government will undertake, by exact and unalterable safeguards, to assure the fulfilment of its interest-paying subsidy and other obligations under the concession and, as a matter of

course. grant the extension of time to which we are justly entitled, owing to the previous delays of the Government.

WM. A. AMBERG,
1041 Marquette Building, Chicago.
A. W. GREEN,
Chicago.
Z. C. BROSSEAU,
M. J. RUSSELL,
By W. A. AMBERG.
B. F. BREMMER,
WM. B. MARDISEON,
By W. A. AMBERG.

(1071) New York, 1896.

To Messrs. James L. Cherry, and C. F. Schramme,

Dear Sirs,—We have been informed that in lieu of the contemplated arrangement to acquire the Cauca Railroad by purchase, the Colombian Government may request our Company to complete the same to Cali. Now if this proves to be so, you are authorized to consummate an arrangement to that end, providing the Government will undertake, by exact and unalterable safeguards, to assure the fulfilment of its interest-paying subsidy and other obligations under the concession, and, as a matter of course, grant the extension of time to which we are justly entitled, owing to the previous delays of the Government.

EDWARD P. GRAY

Witness:
FRED FRANKS

WM. RENNIE.

Witness:
FRED FRANKS

New York, June 15th, 1896.

To Messrs. James L. Cherry, and
C. F. Schramme.

Dear Sirs,—We have been informed that in lieu of the contemplated arrangement to acquire the Cauca Railroad by purchase, the Colombian Government may request our Company to complete the same to Cali. Now if this proves to be so, you are authorized to consummate an arrangement to that end, providing the Government will

undertake, by exact and unalterable safeguards, to assure the fulfilment of its interest-paying subsidy and other obligations under the concession and, as a matter of course, grant the extension of time to which we are justly entitled, (1072) owing to the previous delays of the Government.

LADENBURG, THALMAN & Co.
OFFENBACH & MARKS
BLUM. ST. GOAR & Co.
GUST HAYE
HENRY B. PIERCE
M. HUTCHINSON
THEODORE WEICKER
ISAAC UTTERMEYER
H. J. RENNER
J. B. DUDLEY
THORNTON N. MOTLEY & Co.
G. B. CALMAN
per G. B. CALMAN Atty.
J. P. SMITH
V. SCHALLER
GUST SCHIPPER
SOLOMON TURCK
EMIL WOLF
G. WINTSCHGER
J. L. CHERRY
C. H. SCHRAMME
CHAS. SCHIPPER
H. R. DE MILT
E. H. KELLOGG
E. S. NASH
A. N. BENJAMIN
DAVID CALMAN
W. G. CREAMER & Co.
MARCUS STINE
H. L. CALMAN
per G. B. CALMAN Atty.
GEO. GLEISHMAN
EPPINGER & RUSSELL Co.
JAMES FLANAGAN
HUGO BLUMENTHAL
HENRY A. RICHARDSON

NOTE. The above document is certified to by the Consul General of Colombia with date June 30th, 1896, the signatures being personally known to the Consul, who certifies that they are persons of high financial standing, capable of carrying out their obligations.

Translation of Letter from President Caro to Minister of the United States.

Sopo, 14 January, 1896.

His Excellency Mr. Luther F. McKinney,
American Minister,

My Dear Esteemed Mr. McKinney,—I have received the communication which you have been pleased to send me dated yesterday and hasten to answer the same.

(1073) In order to clear up certain prior points I begin to state that the Colombian Government esteems it an honor and fortune to cultivate amicable relations with the American Government and of this sentiment has given proofs prior to the transcendental success of the message of President Cleveland, to which you refer in your note.

As far as I am concerned, it has always been my desire to extend not only the official relations between the two Governments but also those industrial and commercial between the two nations. It is sufficient to record that when the Concession of the Santander Railway was contemplated I endeavored that it should be granted to an American, which, however, was not accomplished owing to the unwillingness of the party interested and even this day the Directors, the organ of the liberals in Bogota, accuses me of having preferred in the Girardot Railroad Concession the propositions of a respectable American citizen to that made by a National company.

But if this is the spirit of the present administration, it is nevertheless true that this Government as well, as the Government of the United States, would feel interested in that in the carrying out of enterprises established in Colombia there should be no difficulties and delays which will cool off the sentiments of paternity which we endeavor to maintain. I have had the pleasure of hearing you speak in the same sense when the concession of the Girardot Railroad was contemplated and after the failure and the grave censures against this Government, which were occasioned by the want of seriousness and bad conduct of its concessionario, Pennington.

The Government as a political body is one and another thing as an administrative body charged with the execution of the laws and exacting from whomsoever it may concern the fulfillment of obligations contracted with the State, without distinction of persons or nationalities. A controversy with an American *concessionario* should not be deemed as a proof of lack of sympathy towards the (1074) American nation when in a like case the proceeding is in a like manner against natives, yea against natives who have rendered good service to the political cause of the Government. I cite for instance the recision of the contract for the lease of the maratime salt mines adjudicated by public auction to friends of the Government and of its President. I must believe that you will find the observations well founded and trust that you will feel assured that while this Government involuntarily commit errors, the fatality of human criticism being known, it always desires to act equitably and just.

I also must correct the idea which you say the Government entertained in taking up the proposition made by you to enter into an amicable settlement with Mr. Cherry, *i. e.*, to only give a proof of courtesy towards you without intending any consequence whatsoever. The Government proceeded seriously, though not with such haste as you de-

sired in view of the difficulties which the matter itself offers and I trust that you will discard this idea as a suspicion unfounded as well as unjust.

I abstain to dwell upon the antecedents of the Cherry question, which you well know and limit myself to certain points which demand explanation.

The Government in declaring the contract forfeited obeying the law, fixed for the *concesionairo* the time of 30 days to contest; I perceive that you have deemed it strange that this term was assigned. To this permit me to observe:

(1) That Mr. Cherry knew of this law the moment it was promulgated and having omitted to put the same into execution for many months he was sufficiently prepared to contest the same in manner the most convenient to him.

(2) That though the contract does not fix a term such is essential for any notification as otherwise the same would not have *have* any effect should the interested party fail to contest.

(3) That though the time cannot be considered for reason expressed at the beginning, the same was made (1075) ample so that the concessionario could come to Bogota to treat the matter as you desired.

Before leaving the city I accepted a basis of an arrangement equal in substance to that mentioned in your note, but on the 7th inst. Mr. Canon communicated to me an answer from Mr. Cherry of a definite character which contained some new phrases, as one exacting $30,000—indemnity for the voyage which he made to Bogota. This indemnity I cannot concede, not on account of its amount, but because such concession on the part of the Government would be tantamount to a declaration that the law had caused damage and because it would prejudge against the Government the question, which is to be decided by arbitration.

Mr. Canon has examined the accounts with the result that, in his conception, more interest has been paid to Mr. Cherry than he is entitled to for the years passed, which would imply a reduction in the amount due for 1895. Mr. Canon also informed me that he had made a memorandum on these points and asked my permission to submit the same to a council of ministers so that I might be able to adjudge more accurately after receiving their opinion.

You no doubt think this new authorization for a coun-

cil of ministers strange, because you do not know the fact, that Mr. V. Mallarino, agent of Mr Cherry, came to see me, and after having shown him the remarks made by Mr. Canon, he requested me urgently to authorize the prompt assembling of such council.

I enclose a memorandum of the terms which I have accepted and do accept as basis for a preliminary arrangement with Mr. Cherry. In these terms is conceded all I can concede without violating the law and prejudging the question, facing, as I do, the profound discontent of the Caucanos who, as you know, with or without reason, judge that Mr. Cherry has a very valuable concession and has lacked the necessary captal and has delayed too long the completion of an enterprise which they deem essential for their industry.

If Mr. Cherry will accept this basis, a contract may (1076) be signed, if not we will proceed to the formation of the arbitration.

I trust Mr. Minister, that you will receive benevolently the frank explanation, contained in this letter, and I remain your attentive servant and friend,

(Signed.) M. A. CARO.

Copy of Basis Accepted by the Vice President of the Republic Contemplating a Settlement with Mr. Cherry, Received by the American Minister January 15th, 1896.

(1) The Government declares suspended the resolution of forfeiture until the next Congress has determined if it will authorize or not the Government to enter into an amicable arrangement with the concessionario. If Congress should not authorize such arrangement or the concessionario not accept the basis which Congress signifies to the Government for a settlement, the formation of the Arbitation Tribunal to which the contract refers in case of declaration of forfeiture shall be proceeded with.

(2) Meanwhile the obligations under the contract shall be fulfilled by both parties. The guarantee of interests for the year 1895 shall be paid in conformity with the liquidation to be made by the Ministro de Hacienda,

(3) It is understood that the suspension of the forfeiture, which suspension is made with the sole object of bringing about an amicable settlement by the intervention of Congress, shall not be pleaded neither in favor or against either party nor affect the rights which either party has to allege, if the case arises, before the Arbitration Tribunal.

(1077)

C. C. & I. Co.

BALANCE SHEET SEPTEMBER 1895.

I. Eppinger	833 31	Stock Subscription acct.	243,875 —
W. J. English	6,666 67	Bond " "	264,500 —
Construction acct	782,330 14	F. Wilson	200 —
Cash	1 81	J. L. Cherry, Loan acct.	1,062 67
		J. L. Cherry, Personal acct	195,856 58
		C. F. Schramme. *id*	19,225 —
		Legal Services	10,000 —
		Interest acct	55,112 68
	799,831 93		799,831 93

New York Sept 30th, 1895.
E. & O. E.

Certificates of Measurement of Road.

TO THE PREFECT OF THE PROVINCE:

Conforming to Article 25 of the Contract for the construction of the *Ferrocarril del Cauca* (Law 16 of 1890) I respectfully request you to name two experts for the purpose of determining the total actual extension of the railway starting from Cordoba.

Buenaventura, October 9th, 1891.

(Signed) J. L. CHERRY.

Filed by the party interested, and passed to the office of the Prefect.

The Secretary—RAFAEL CUEVAS P.

OFFICE OF THE PREFECT,
Buenaventura, Oct. 9th, 1891.

The aforegoing petition being just and legal, and being made by the Concessionary of the Cauca Railroad, Mr. James L. Cherry, and sustained by the provisions contained in Article 25 of Law 16 of 1890, which approves said contract; I hereby appoint expert measurer of the length of railway starting from Cordoba to Caballete, Mr. Ramon Menchaca and Adolfo Velazco, (1078) who will appear before me to give their legal promise, and thereafter will immediately proceed to carry out their duties. The 10th inst. is hereby fixed for this purpose, and the measurement having been duly executed, all papers to be returned to the petitioner.

JUAN BORRERO.

The Secretary—RAFAEL CUEVAS F.

In the town of Buenaventura on the 9th day of October, 1891, there appeared before me at the Prefecture before the undersigned Prefect and Secretary, Mr. Ramon Menchaca and Rodolfo Velazco, appointed as expert measurers of the extension of railway comprised between Cordoba and Caballete, in accordance with the petition made by Mr. James L. Cherry, and both having been informed of the pertinent articles of the Penal Code, the usual oath was administered by the Prefect as Christians and by God Almighty and the sign of the cross, and by which they promised to carry out well and faithfully the duties entrusted to them.

Signed with the Senor Prefect and before the undersigned Secretary—JUAN A. BORRERO—RAMON MENCHACA—RODOLFO VELAZCO.

The Secretary, RAFAEL CUEVAS F.

Report of the Prefect of the Province of Buenaventura.

The undersigned, appointed by the Prefect of the Province experts for the measurement of the extension of constructed track of the Ferrocarril del Cauca between Cordoba and the place called Caballete de Casa, proceeded to carry out such measurement on the 10th inst. having in view the profile of the line presented to us by Mr. J. L. Cherry, as also the measurements made by the engineers present, Mr. M. P. Carter and David A. Dunn, and starting on the supposition that said (1079) documents are correct and authentic, we confine ourselves to checking said measurements taking at rundown, certain distances on the line. For this purpose, and using the chain of fifty English feet provided for us by the above-mentioned engineers, we made the following measurements:

From the west abutment of the bridge of Caballete de Casa, actual end of the track to the west end of the bridge over the first ravine.

	Feet.	Kils.	Miles.
	1,424	0.43	0.26
From the last-mentioned point to the west end of the bridge over the second ravine.....	518	0.16	0.10
From the last-mentioned point to the west end of the San Antonio bridge	791	0.24	0.15
From the last-mentioned point to the extreme west of a bridge on the track.....	11,119	0.34	0.21

	Feet.	Kils.	Miles.
From the last-mentioned point to the west point of the switch at Santa Rosa.....	911	0.27	0.16
From the last-mentioned point to the west point of first bridge at Santa Rosa	500	0.15	0.09
From the last-mentioned point to the west point of the second bridge at Santa Rosa	392	0.11	0.07
From the last-mdntioned point to the west point of the third bridge of Santa Rosa.....	353	0.10	0.06

Carefully comparing our measurements and those made over the same distances according to the data (1080) presented by Mr. J. L. Cherry, we obtained the following result:

Measurement made by the engineers of the Company, Mr. M. P. Carter and Mr. David A. Dunn, according to their plans and other documents, from the point called Caballete de Casa to the east point of the third bridge of Santa	Kils.	Miles
Rosa.....	1.73	1.07
Our measurement over the same distance..	1.70	1.04
Difference.....	0.03	0.03

which is insignificant and not worthy of attention.

Thereafter we proceeded to the village of Cordoba, and taking as a point of departure the west point of the first bridge of Quebrada del Venado, we measured with the 50 foot chain up to the west point of the following bridge over the same ravine, making as follows: 2.185 feet—0.67 kils. —0.41 miles, which is exactly the measurement shown by the documents presented by Mr. Jamee L. Cherry.

With such ratifications we are convinced that the intermediate distances are exact, and consider it useless to continue the measurement over such a long distance.

Therefore, we do not hesitate to affirm as correct that the actual extension of completed track from the mentioned west point of the bridge over the Quebrada del Venado, in Cordoba (inclusive) to the west point of the bridge called Caballete de Casa, is nine kilometers and ninety-four hundredths (K. 9.94) or six miles and seventeen hundreths (M. 6.17) at the rate of 3,280 English feet per kilometer.

This being our only intervention in this affair, and,

being confident of having fulfilled our duties with the best possible accuracy in accordance with our best knowledge and understanding, we declare at an end this report, and sign the same at Buenaventura, the 12th day of October, 1891.

(Signed.) RAMON MENCHACA,
RODOLFO VELAZCO.

Report of Measurement of the Track Comprised Between Cordova and San Jose.

(1081) In Buenaventura, on the ninth day of November, 1893, the Prefect of the Province, accompanied by the legally appointed expert surveyors, Messrs. Jorge R. Micolta and Jose Maria Cardenas, the Concessionary, Mr. James L. Cherry, the Chief Engineer, Mr. M. P. Carter, the local accountant of the Company, Mr. Edward Blum, and the undersigned Secretary of the Cordoba station, proceeded to carry out the instructions of the Minister of Public Works, conveyed in telegram No. 675, dated 7th inst. Accordingly, after having compared the measuring chain presented by the Engineer Mr. Carter, with a meter measure which had been brought for the purpose, and ascertaining that said chain was twenty meters in length, the measurement was forthwith taken up from the western extremity of the "Quebrada del Venado" bridge to the western extremity of the "Casa" trestle bridge, giving a total (up to said bridge) of nine kilometers, nine hundred and forty meters (9 K. 940 M.); thence to Piedra Piedra, one kilometer, ninety-two meters (1 K. 92 M.); from the latter point to the first bridge of Bodegas, three hundred and forty-nine meters (349 M.); from this bridge to the "Sucre" meadow, five hundred and seven meters (507 meters); from this meadow to the first wooden bridge before reaching Sucre, one kilometer (1 K.); from said wooden bridge to the western end of the Sucre iron bridge, four hundred and twenty-eight meters (428 meters); thence to the eastern end of the same iron bridge, fifty-two meters (52 meters); from this point to Cumbamba, five hundred and twenty meters (520 meters); from here to the first Cumbamba bridge (western part), two hundred meters (200 meters), and from said bridge to opposite the second door of the San Jose grocery store, one kilometer, three hundred and ten meters (K. 310 M.) Grand total from the western part of the
(1082) "Quebrada del Venado" bridge to opposite the second door of the San Jose grocery store, sixteen kilometers, four hundred and fifty meters (16 K. 450 M.) By special agreement between the Prefect and the Concession-

ary, Mr. Cherry, immediately after the measurement, a post was placed in front of aforesaid grocery store, and the immediate placing of the kilometric posts was ordered. The track comprised between Cordova and San Jose is open to the traffic. This being the condition of affairs, and there being nothing further to do in reference to the instructions of the Minister of Public Works, the Commission considered their labors as terminated, and all those who intervened therein sign hereunder in duplicate copies, one to be forwarded to the Minister of Public Works and the other to the Governor of the Department.—The Prefect, RICARDO ESCOBAR—The Concessionary, J. L. CHERRY—The Surveyor, JORGE R. MICOLTA—The Surveyor, JOSE MA. CARDENAS—The Engineer, M. P. CARTER—The Local Accountant, EDWARD BLUM—The Secretary, ANTONIO J. RENTERIA.

Deed of Transfer, Executed this 30th day of December, 1890, by David Calman, as Attorney for Mr. James L. Cherry, in favor of the Company Called "Cauca Company."

In the city, county and State of New York, United States of America, on the 30th day of December, 1890, before me, Jose G. Morales, Counsellor of the State of New York, Notary Public of this county, a resident of this city, and neighbor of the hereinunder mentioned witnesses, appeared on the one part, Mr. David Calman, of age, single and a lawyer by profession, in his capacity as attorney for Mr. James L. Cherry, as per power of attorney conferred on the 29th of November last before the notary of this county, Mr. Leo G. Rosenblatt, which document he has shown me, and Mr. Robert W. Paterson, also of age, a widower, merchant, with office in this city at No. 154 Front St., in his capacity as (1083) President of the Company called the "Cauca Company," which corporation was organized under the laws of the State of West Virginia; the business office whereof is temporarily situated at No. 32 Broad St. of this city. I know both parties, who declare that they are in the full possession of their civil rights, and having, in my opinion, the legal qualifications requisite for executing the present instrument, the former said: that on the 27th day of August last, his principal, Mr. James L. Cherry, signed a contract with the Government of the Republic of Colombia, by which contract, known as No. 20, he acquired the right to build certain railways in the Republic of Colombia and to extend the Cauca Railway. That a meeting of the directors of the Company called the "Cauca Company," held in this city on the 10th inst. said Company was authorized to accept

from Mr. James L. Cherry a transfer and assignment of aforesaid contract, which transfer is to be registered at the proper office in the City of Bogota, Republic of Colombia; the President of the aforesaid "Cauca Company" being empowered to accept said transfer and assignment on behalf and in representation of the same. That being desirous of effecting said transfer, and in the best legal form he agrees that; in the capacity hereinbefore mentioned and on behalf and in representation of his principal the aforesaid James L. Cherry, he assigns and transfers for the sum of fifty thousand dollars and other valuable considerations, unto the aforesaid "Cauca Company" all the rights, titles, actions and claims that said James L Cherry may have by reason of the aforesaid contract; which transfer he makes absolute and under the same terms and conditions mentioned therein. Mr. Robert W. Paterson, President of the Company called the "Cauca Company," said that: by virtue of the authorization given him at the meeting held by the directors of said Company, of which action mention has already been made herein, on behalf and in representation of the "Cauca Company" he accepts the transfer and assignment made herein.

(1084) They so agreed, and having interpreted to the parties the contents of this document, being both ignorant of the Spanish language, they found it in order, and ratified and signed the same in my presence and that of the witnesses, Mr. Jesse W. Lilienthal and Mr. Leo G. Rosenblatt, neighbors, present, and of age and fully qualified.

JAMES L. CHERRY,
pp. D. CALMAN.
"CAUCA COMPANY"
By ROBERT W. PATTERSON,
President. [L. S.]

Witnesses:
JESSE W. LILIENTHAL,
LEO G. ROSENBLATT.

Correct.
GEORGE RUSSELL,
Secretary.

Before me
JOSE G. MORALES,
[L. S.] Notary Public,
N. Y. Co.

Approved.
JAMES L. CHERRY,
Concessionary.

CONSULATE-GENERAL OF COLOMBIA. No. 584.

New York, 7th January, 1891.

The undersigned Consul General, hereby certifies: that Mr. Jose G. Morales is a notary public, legally authorized to exercise his functions in the city and county of New York, aad that the signature and seal which appear at the bottom of the above certificate are genuine and those used by him in the exercise of his office. In witness whereof he hereunto affixes his signature and seal.

[L. S.] CLIMACO CALDERON.

(1085) STATE OF NEW YORK, } ss.
City and County of New York, }

Know all men by these presents, That on the thirtieth day of December, one thousand eight hundred and ninety, before me personally appeared Robert W. Paterson, who is known to me and I know to be the President of the Cauca Company, and declared: that he signed the above document which is the deed of assignment and transfer made in favor of the aforesaid Company by James L. Cherry, by virtue of the authorization conferred upon him by the directors of said Company; that he affixed the seal of said Company on aforesaid document, as President thereof; and that he signed said document on behalf and in representation of aforesaid Company, and that he thereby acknowledges and ratifies before me the execution of same. Also on this day appeared David Calman, in his capacity as attorney for James L. Cherry, whom I know personally, and know is the person mentioned in aforesaid document, and he declared that: as attorney of James L. Cherry he signed said document, and hereby acknowledges and ratifies the execution thereof as the act and deed of his principal, the aforesaid James L. Cherry.

JOSE G. MORALES,
[L. S.] Notary Public,
N. Y. Co.

CONSULATE GENERAL OF COLOMBIA No. 599.

New York, 26th May, 1891.

The undersigned, Consul General, hereby certifies: that Mr. Jose G. Morales is legally authorized to exercise his functions in the city and county of New York, and and that the signature and seal that appear at the bottom of the preceding certificate are genuine and those used by

him in the exercise of his office. In testimony whereof he hereunto affixes his signature and seal.

CLIMACO CALDERON.

Power of Attorney From Cherry to Calman.

(1086) Know all men by these presents, That I, James L. Cherry, of San Francisco, have made, constituted and appointed, and by these presents do make, constitute and appoint David Calman of New York my true and lawful attorney for me and in my name, place and stead to sign, and execute all contracts between me and the Cauca Company and between me and the Colombian Construction and Improvement Company and especially the contracts of which drafts are hereto annexed and to do all other acts for me and in my name necessary to carry out any and all of said contracts; to receive and receipt for in my name all certificates provisional or permanent of said Companies and surrender for cancellation or transfer said certificates and order new ones to be issued and receive the same in accordance with said contracts, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the twenty-ninth day of November, in the year one thousand eight hundred and ninety.

J. L. CHERRY.

Sealed and delivered in the presence of—

LEO G. ROSENBLATT.

(1087) STATE OF NEW YORK, County of New York, } ss.

Be it known, That on the 1st day of December, one thousand eight hundred and ninety, before me, Leo G. Rosenblatt, a notary public in and for the State of New York duly commissioned and sworn, dwelling in the city and county of New York personally came and appeared James L. Cherry, to me personally known and known to me to be the same person described in and who executed

the within power of attorney and acknowledged the within power of attorney to be his act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, the day and year last above written.

LEO. G. ROSENBLATT,
Notary Public.
N. Y. Co.

DEFENDANT'S EXHIBITS.

(1088) SUMMARY OF OFFICE, TRAIN AND SHOP EXPENSES; COST OF TIES AND BRIDGES, TIMBER AND ALL OTHER EXPENSES OF ADMINISTRATION AT BUENAVENTURA FOR SIX YEARS.

Date.	Salaries & Office Exp. Buenaventura. Ex. 12.	Wages for Track and Bridges. Ex. 12*a*.	Train Expenses. Ex. 12*b*.	Shop Expenses. Ex. 12*c*.	Renewing Ties. Ex. 12*d*.	Timber for Bridge Repairs. Ex. 12*e*.
1891	$7,390	$ 7,632	$5,070	$5,828	$3,033	$2,436 33
1892	7,370	7,752	4,950	6,428	3,033	2,436 33
1893	7,270	15,901	5,313	3,156	3,033	2,436 33
1894	9,456	13,600	5,452	2,752	3,033	2,436 33
1895	6 580	13,344	5,452	2,752	3,033	2,436 33
1896	6,580	13,344	5,452	2,752	3,033	2,436 33
	$44 646	$71,573	$31,691	$23,668	$18,198	$14,618 00

Date.	Total Expenses Per Year.	Receipts Per Year.	Percentage of Expenses to Gross Earnings.
1891	$31,389 33	$25,062 66	125 per cent.
1892	31,969 33	30,118 02	106 per cent.
1893	37,111 33	39,583 12	94 per cent.
1894	36,729 33	46,466 09	79 per cent.
1895	33,597 33	46,466 09	72 per cent.
1896	33,597 33	46,466 09	72 per cent.
	$204,392 16	$234,162 07	

NOTE.—Exchange calculated at 133 per cent. ptemium.

NOTE.—Traffic operations from Buenaventura to Cordoba commenced Jan. 1, 1891.

Traffic operation from Buenaventura to San Jose commenced Sept 1, 1893.

(1089)

Gross receipts for traffic for six years (Gold)			$234,162 07
Gross expenses of traffic for 6 years, Gold		$204,392 16	
Less ½ salary and Administration expenses for '91, '92, '93, which are chargeable to construction	$11,015 00		
Less ½ Shop expenses during '91, '92, '93, chargeable to Construction	7,706 00		
		$18,721 00	
		$185,671 16	
Repair of track K. 20.240 to K. 27.100	$19,367 00		
Repair of San Cipriano Wooden Bridge	5,000 00		
330.74 tons of 40 lb. steel rails at $37 01	12,241 07		
79.63 tons of 52 lb. rails at $32.50	2,588 31		
		$39,196 38	
Balance		$9,294 53	
		$234,162 07	$234,162 07
Balance to the credit of the Government		$9,294 53	
As taken from the statement, the gross revenue for tariffic amounted to			$234,162 07
Plus amount credited for expenses of Administration, chargeable to Construction, which has been debited to operation of the road			18,721 00
			$252,883 07
The expenses of operation, including maintenance, appear as		$204,392 16	
Plus amount expended on repair of line from K. 20.240 to K. 27.100 (Ex. 13)		19,376 00	
Plus amount expended in repair of San Cipriano Wooden Bridge (Ex 14)		5,000 00	
" for 330 tons of 40 lb. rails between Buenventura and Cordoba		12,241 07	
" for 79.63 tons 52 lb. rails used in the same locality		2,588 31	
			$243,588 54
Leaving a balance of			$9,294 53

Prof. Amy's Sworn Translation of the Convention.

(1090) THE CAUCA RAILWAY.

Documents relating to the termination of the differences heretofore existing between the Government and "The Cauca Company" in connection with the contract as to the construction of the said railway, and as to the acceptance and delivery of the railway under the agreement made between Mr. James L. Cherry under date of the 4th day of January of the present year.

Agreement for the settlement of the differences existing between the Government and "The Cauca Company" in connection with the contract for the construction of the Cauca Railway.

The undersigned, that is to say, Manuel Esguerra, acting as the Secretary of the Treasury, authorized by His Excellency, the Vice-President of the Republic, acting as the Executive hereinafter designated "The Government of Colombia," of the one part, and James L. Cherry, acting as general manager, agent and attorney in fact of "The Cauca Company," organized in New York to construct the Cauca Railway, hereinafter designated as "The Company" of the other part, in conformity with the bases of the agreement stipulated on the 27th day of November, 1896, between the Government of Colombia and Cherry, acting as aforesaid, bases consented to under the provisions of Article I of Law 41 of the year 1896, and under the general power of attorney made to Cherry by the President of "The Cauca Company" before Mr. Jose G. Morales, notary public of the City of New York, on the 31st day of December, 1890, and under the special power of attorney made also to the said Cherry by the President of "The Cauca Company" on the 23rd day of October, 1895, before Mr. Julio (1091) C. Ponce de Leon, notary public of the City of New York, have entered into the following agreement:

Article I. The Government of Colombia and the Company compromise and declare settled all pending differences both parties in connection with the contract approved by Law 16 of the year 1890, regarding the construction of a railway from Buenaventura to Manizales" by means of the stipulations set forth in the following articles:

Article II. The Company surrenders absolutely the concession to which Article I. of the contract approved by Law 16 of the year 1890 relates, and, within fifteen days next following the day on which this agreement shall be approved, shall deliver to the Government of Colombia the Cauca Railway, with all its fixed plant, rolling stock on hand, wor*ds*, buildings, tools, utensils of all kinds, appurtenances, etc., etc. In consideration therefor the Government of Colombia is to pay to the Company a just indemnity for all the works constructed by the Company during the time the undertaking has been in charge, and for such rolling stock and other things imported by the Company for use on the railway, and which are now in existence.

Article III. The Government of Colombia and the Company accept in advance, as a just and only indemnity, a sum which shall be the equivalent of what the Company shall prove it has expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., etc., imported for use on such railway.

Article IV. In order to determine the indemnity to which the foregoing articles relate the Government of Colombia and the Company agree to constitute a special commission, to be composed of three (3) members, who are to be named in the following manner: One by the Secretary of the Treasury of Colombia, another by the Attorney in Fact of "The Cauca Company," and the third to be agreed upon by the Secretary of State of the United States of America and the Minister of Colombia at Washington.

Article V. The Government of Colombia and the Company hereby authorize the Commission to be con- (1092) situated in the manner hereinbefore indicated, to fix the indemnity already mentioned and such Commission shall appraise the structures, works and materials referred to. For such purpose and in order to thus determine the consequent indemnity, the Commission shall examine and consider the books and accounts of "The Cauca Company" at New York, the documents that the Government of Colombia and the Company present to it in support of their respective claims, and such as the Commission may demand; it shall inspect on the ground the works of the railroad and the rolling stock, in order to make the necessary checks and verifications for the determination of the facts which are to serve as the basis for fixing the indemnity, and shall have the right for such purpose to examine witnesses and appoint experts; it shall fix a reasonable period for the parties so be heard, to consider the proofs or data that may be presented to them for the determination of the structures, works and materials aforesaid, the appraisal of the same and for the fixing of the consequent indemnity; and it shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves.

Article VI. Should any of the members of the Commission decline or resign from the position, or for any reason cease to act the proceedings of the Commission shall not thereby be invalidated, but the Commission shall be restored by a new appointment, which is to be made by the party who appointed the member who fails to act, within thirty days, counting from the day on which such failure to act shall occur. If such party shall not comply with such obligation, the Secretary of State of the United States of America and the Minister of Colombia at Washington shall proceed, by agreement to appoint the person to fill such vacancy.

Article VII. The Government of Colombia and "The Cauca Company" shall appear before the Commission in person or by attorney-in-fact or agents.

Article VIII. In order to carry into execution the proceedings fixed by this agreement and to render its decision, (1093) the Commission shall meet in the place or places selected by it; and for such purpose shall have one hundred and fifty (150) days counting from its installation, which may be extended sixty (60) days more in case justifiable grounds of delay shall arise.

Article IX. The decision of the Commission shall be final and without appeal and the amount of the indemnity fixed by the Commission shall be payable to the Company as provided in the next following article:

Article X. The Government of Colombia calculating approximately that "The Cauca Company" has disbursed in the work on the Cauca Railway the sum of about two hundred thousand dollars ($200,000.)—the Company considering, however, such sum to be much less than the just price of the works executed by it—for the purpose of obtaining the immediate delivery of the railway, in conformity with the last part of Article 1 of Law 41 of 1896, pays in advance to the Company the said sum of two hundred thousand dollars ($200,000) in gold on account of such amount of indemnity as the Commission may fix, which sum the Company acknowledges having received from the Government of Colombia to its entire satisfaction. In case such indemnity as may be fixed in conformity with this agreement shall be greater than the sum of two hundred thousand dollars, the Government is to pay the excess at such time, in such manner and on such terms as may be determined by the Commission.

Article XI. The delivery to which Article II. relates shall be made by the Company to the person or to the representative designated by the Government under a strict inventory in which must appear the specifications and references relating to the matter, so that in the inventories the condition of everything that is delivered shall be clearly set forth.

Article XII. The expenses of the personnel, mobilization and plant of the Commission shall be paid in advance, in equal shares by the Company and the Government of Colombia, and the Commission shall decide whether such expenses are to be charged against one or both of the parties.

(1094) Article XIII. Upon the performance by the Company and the Government of the stipulations set forth in this agreement both parties shall be discharged and released, the differences that have arisen between them shall be at an end, and the rights and obligations springing from the contract approved by Law 16 of 1890, hereinbefore referred to, shall be extinguished. For such reason the Company, from now henceforth, waives the right to any claim against the Government of Colombia under the contract aforesaid.

Article XIV. Within eight days next following the ratfication of this agreement the Secretary of the Treasury of Colombia and the Company shall nominate that member of the Commission which each is to appoint.

Article XV. The Commission which is constituted by this present agreement shall meet and organize at New York within sixty days next following the day of the ratification of this agreement, which period may be extended for thirty (30) days more in case justfiable grounds of delay shall arise.

Article XVI. In order that this present agreement shall be valid the ratification of His Excellency the Vice-President of the Republic acting as Executive, shall be had.

In testimony whereof this present is signed at the city of Bogota on the 4th day of January, 1897.

MANUEL ESGUEBRA.

J L. CHERRY,

Attorney in fact, General Manager and Agent of "The Cauca Company."

Executive Department. Bogota, January 4th, 1897.

Approved:

M. A. CARO.

The Secretary of the Treasury,

MANUEL ESGUERRA.

The foregoing is a true translation of the Convention of January 4th, 1897, this translation being done by me, and having my initials on each separate page thereof.

(Signed) F. J. AMY.

COMMISSION'S EXHIBITS.

(1095) 224 S. 43d Street, Philadelphia, April 27th, 1897.

Dear Prof. Haupt,—I am sorry to say that I do not feel able to decide such a question. I do not believe that any purely "literary student" is? The interpretation of the terms must depend entirely upon the customary use of the word in such contracts, and is not to be settled by its common meaning in the literature.

I advise yon to trust no one but a lawyer practicing law in Colombia.

Sincerely yours,

(Signed.) M. W. EASTON.

April 29th, 1897.

My Dear Professor Haupt,—I am afraid to express any opinion whatever concerning the above matter. My study of Spanish, as you know, has been entirely from a literary standpoint, and no such student of the language would be competent to give an opinion in this case.

Only the opinion of a lawyer versed in the law of the country would be worth considering, it seems to me.

Very sincerely yours,

(Signed) HUGO A. RENNERT.

Philadelphia, May 1st, 1897.

Mr. L. M. Haupt, C. E., Chairman:

Dear Sir,—As requested in your favor of the 26th ultimo, I have carefully examined and inquired into the proper meaning of the term "*trabajos y obras*" about which you say there exist differences of opinion, and have (1096) pleasure in forwarding you herewith enclosed a written statement of the conclusion I have arrived at, together with the necessary demonstrations and definitions.

Assuring you that I shall give my closest attention to any matter of technical character that you may submit, I remain,

Very respectfully yours,

(Signed.) JULIUS KAISER.

PRELIMINARY DEFINITIONS.

TRABAJOS: A—Latin; *labor*, *opera*.

English; the exercise or occupation in some kind of work, generally referring to muscular exertion.

B—Latin; *opus*, *elucubratio*.

English; any written work or speech treating on any subject.

OBRAS: A—Latin; *opus scriptum*, *aedificium*. labor, etc.

English; anything done or produced through any agent. Authority for the above: *Novisimo Diccionario de la Lengua Castellana que comprende la edicion integra del publicado por la Academia Espanola*, etc., *por una Sociedad de Literatos*, Paris, 1892. Dictionary of the Spanish language, which comprehends the whole last edition of that published by the Spanish Academy, etc., by a Society of Literary men, Paris, 1892.

ANALYSIS, ETC.

Both terms "*trabajos*" and "*obras*" may cover the same field. The scope of their meaning is indefinite, and, therefore, generally modified by some words or expressions accompanying them. The general acceptance of their meaning is: for "*trabajos*" alone, work involving mus-
(1097) cular exertion, and for "*obras*" work involving mental exertion, but also completed works, buildings, etc., of any kind. The two terms are used in Spanish precisely in the same sense as we use in English "work and labor." "*Obras*" necessarily carries completion in its sense.

In the article in question "*trabajos y obras*" is modified by the particle adjective "*ejecutados*," which covers the sense of both "*trabajos*" and "*obras*" (Grammar of the Spanish Academy, Concordancia). The interpretation of "*ejecutados*" applicable here is "done, finished, executed," and points out decidedly a necessary completion of what is comprised in "*trabajos*" and "*obras*" both. Further, the expression "*trabajos y obras ejecutados*," in the article quoted, is modified or particularized by; "*en la construccion de la expresada via ferrea*," meaning "in the construction of the said railroad," so that the whole phrase "*trabajos y obras ejecutados*" ..... *en la construccion de la expresada via ferrea*" means "work and labor done in the construction of the said railroad," or "work and labor done in constructing the said railroad."

CONCLUSION: 1. "*Trabajos y obras*" does not include any work touching the administration of the railroad, nor

is the said expression modified by any term or clause which would imply it.

2. The same term "*trabajos y obras*" is modified by "*ejecutados*," which together distinctly means "work and labor done" in the sense of "finished," thus excluding all administrative work.

3. "*En la construccion de la expresada via ferra*" reduces the meaning of "work and labor done" to that of "work and labor which was done in constructing the railroad in question only.

Guided by the facts deduced from the above, I am decidedly of opinion that the term "*los trabajos y obras*" does not in any sense cover, nor refer to administrative work or expenses.

(Signed.) JULIUS KAISER.

(1098) AMERICAN SOCIETY OF CIVIL ENGINEERS,

127 East Twenty-third St.,

New York.

April 29th, 1897.

Dear Prof. Haupt,—Answering your favor of the 26th' lately received, I should say that the meaning of Article 3 is pretty plain. As requested, I send my translation.

The verb *costear* (not *costur*) in Spanish means to bear all charges—pay all expenses, and invariably refers to all expenses.

"*Trabajos*" means work in full, everything completed when it is spoken of as "*los trabajos*." The two words "*costear*" and "*trabajos*" strengthen each other. I have often read and heard the expression, "*No va a costear los trabajos*"—it will not pay expenses; meaning that the returns will not pay for *everything* expended. "*Obra*" in Spanish is not generally taken in the broad sense given to "*los trabajos*"; it is the same as the French "*Œuvre*," meaning a specific piece of work. It does not strengthen "*trabajos*" here, but was probably put in for the same reason that lawyers invariably "give, bequeath, assign, turn over," and generally bedevil language, so as to create trouble where otherwise none would exist.

The "article" seems to have divided cost into two parts, one incident to construction in Colombia, and the othering importations necessary to the completion of the work, according to contract. It is hardly necessary to point

out that administration charges such as possible office rent, clerk hire, attorney's fees, etc., in New York or any other foreign place, should be distributed over the various expenses and form a part of the same as much as the pay-rolls of the various gangs. Of course, I refer to legitimate expenses.

Trusting that my explanations and translation may be of some use to you, I beg to remain,

Very truly yours,

(Signed.) J. S. ELLIOTT.

(1099) TRANSLATION.

The Government of Colombia and the Company recognize beforehand the just and only (possible) indemnification to be a sum (of money) equivalent to which the Company may be able to prove as having borne the charges of construction and works executed by it (the Company) in the building of the said road and of the said rolling stock, iron work, etc., introduced for the purpose of being used on the same road.

(Signed.) J. S. ELLIOTT.

EMILIO DEL MONTE,

68 Broad Street,

New York.

NEW YORK, May 3d, 1897.

Mr. Lewis M. Haupt,
Care Messrs. Haupt & Franklin,
18 S. Broad St., Philadelphia, Pa.:

Dear Sir,—I just received your esteemed favor of 1st inst., and I beg to say the following:

Los trabajos y obras, referring to railroads, appears to me to be a form of expression improperly used, since the word "*obras*" generally signifies bridges, viaducts, culverts, drains, retaining walls and the stations, etc., while the word "*trabajos*" embraces the preceding items, besides all the others that are made until the railroad is completely built.

And, in my opinion, in the value of the works on a railroad is included absolutely all the money disbursed for building it, with the exception of those outlays that refer exclusively to the capital and the formation of the Company.

In a word, to the works should be charged the ordinary expenses relating to laborers, directors of the work, and

materials, and besides, those that appertain to its manage-
(1100) ment, as well as the judicial and legal disbursements, but not the expenses that refer to the issuance of loans, bonds, etc., for building the road.

Hoping that this opinion of mine may be of some use to you,

I am,

Yours very truly,

(Signed.) E. DEL MONTE.

U. S. Navy Yard,
Brooklyn, May 3d, 1897.

Prof. Lewis M. Haupt, Philadelphia.

My Dear Mr. Haupt,—Agreeably so the request contained in your valued letter of the 1st inst., I enclose herewith my views as to the meaning of the terms "*trabajos y obras*" as used in the quotation (art. 3) submitted therewith.

Yours very sincerely,

(Signed.) A. G. MENOCAL.

The terms "*trabajos y obras*" are generally used in Spanish-American countries in all contracts executed and concessions granted by those republics.

"*Trabajos*" means works in course of construction and "*obras*" structures or completed works. Taken collectively, these terms embrace the cost of all physical work, together with the material employed in the partial or complete execution of the works under the contract.

If the Company is to be reimbursed for the actual expense incurred in the "*trabajos y obras*" of the road, the sum so paid should include the cost of all labor and material employed in the works, together with the cost of administration, such as official salaries, clerk hire, engineers and other employees necessary and actually applied to the construction of the of the railroad.

(Signed.) A. G. MENOCAL.

(1101) **Report of Edgar S. Barney.**

ON THE BOOKS AND VOUCHERS OF THE COLOMBIA-CAUCA CO., JULY 15, 1897.

THE COLOMBIA-CAUCA CO. ARBITRATION COMMISSION,
NEW YORK, N. Y.

Gentlemen,—In accordance with instructions I have examined the six books of the Colombia-Cauca Co., Cash, Journal and Ledger, kept in New York; and Cash, Journal and Ledger, kept in South America, to October 31, 1893; also the vouchers, petty-cash books, bank check books, cancelled checks and drafts presented.

1. The vouchers, checks, drafts and other papers have been verified with the entries with the six books.
The clerical work on the books is correct.

2. The amounts and liquidations of each voucher are correct in form as well as in regard to the figures.

3. Proper legal form has been observed in all of the vouchers.

4. Taking the claim presented by the Cauca Co. as a basis, each item has been compared with the cash book, journal and ledger entries, and the following classification has been made:

Group 1. Administration at New York.
" 2. Construction, equipment and other expenses applicable to the physical work of the road.
" 3. Salaries, traveling expenses and other payments to Messrs. J. L. Cherry, C. F. Schramme and S. C. Schramme.
" 4. Financial operations of the Company.

5. Subdivision of Group 1: Administration at New York.

a–1. Rent and office expenses	$1,887 42	
a–2. Salaries	318 30	
a–3. Legal expenses	8,803 70	
a–4. Traveling expenses in the United States and Europe	3,275 75	
a–5. General Expenses	331 80	
a–9. Sundries	575 12	
a–7. Petty cash	1,413 01	
Total Forward		$16,605 10

Brought Forward		$16,605 10

(1102) 7. Subdivisions of Group 2: Construction, equipment and other expenses applicable to the physical work of the road.

b— 1 Bills drawn by the Buenaventura office on the New York office	$143,431 18	
b— 2. Deposit of $50,000.00 returned by the Government.	50,000 00	
b— 3. Railroad material	32,471 25	
b— 4. Sundry supplies	2,763 44	
b— 5. Arms and explosives	6,970 32	
b— 6. Rolling stock	17,980 14	
b— 7. Bridges	12,789 23	
b— 8. Hospital and medical expenses	464 82	
b— 9. Provisions	5,916 73	
b—10 Machinery, tools and engineers' supplies not appertaining to the permanent way	8,044 44	
b—11. Freight, Insurance and Consul fees	15,727 60	
b—12. Commissions	4 52	
b—13 Salaries of employees on the railroad and their traveling expenses	9,680 45	
b—14. Sundries	2,315 17	
Total		$308,559 41

7. Subdivisions of Group 3: Salaries, traveling expenses and other payments to Messrs. J. L. Cherry, C. F. Schramme, and S. C. Schramme.

c—1. Accounts of J. L. Cherry.

a. Salary	65,500 00	
b. Traveling expenses	26,771 89	
c. Interest	5,636 00	
d. Compensations	25,000 00	
e. Transfer of concession	135,000 00	
f. Sundries	5,117 48	
Total		263,025 37
Forward		$588,189 88

(1103)	Brought Forward.....		888,189 88

c—2. ACCOUNTS OF C. F. SCHRAMME.

a.	Salary.....	41,250 00	
b.	Traveling expenses.....	2,233 99	
c.	Interest	.....	
d.	Compensations	25,000 00	
e.	Sundries.....	5 00	
	Total		68,488 99

c—3. PAYMENTS MADE BY S. C. SCHRAMME.

a.	Salary.....	3,681 42	
b.	Traveling expenses.....	375 00	
	Total		4,056 42

8. Subdivisions of Group 4: Financial operations of the Company.

d—1.	Interest on paid-up capital of the Company, (See below).		
d—2.	Interest on the 264,500 bond issue, (See below).		
d—3.	Paid-up interest on loan.....	10,113 27	
	Interest rec'd.....	695 30	
	Balance.....	9,417 97	
d—4.	Amount of capital which was actually received by the Company in cash, (See below).		
d—5.	Capital not paid up, (See below).		
d—6.	Collections..	636 11	
	Total		10,054 08
			$670,789 37

RECAPITULATION OF THE ABOVE TOTALS.

Group 1.	.....			16,605 10
" 2.	.....			308,559 41
" 3.	J. L. C	263,025 37		
	C. F. S.....	68,488 99		
	S. C. S.....	4,056 42		
			335,570 78	
" 4.	.....			10,054 08
	Total.....			670,789 37

NOTE.—This total agrees with the total cost of construction as shown in the New York Ledger. See balance sheet: 670,789.37.

Group 4, d–1. Interest on the paid up capital of the Company.

(1104) The subscriptions to the capital stock were as follows: See ledger, pp. 1-62.

October 15, 1890	100,000
Novembed 15, 1890	20,000
April 1, 1891	57,500
November 30, 1891	28,875
April 23, 1892	7,500
	213,875

All of the $213,875 was paid at various times from October, 1890, to April, 1892.

Interest is herewith reckoned on the paid up capital from the several dates of subscription to Apr 4, 1897, at 6 per cent.

Interest on	100,000,	Oct 15, 1890,	to	Apr. 4, 1897	38,816 66
" "	20,000,	Nov. 15, 1890,	to	" "	7,663 33
" "	57,500,	Apr. 1, 1891,	to	" "	20,728 75
" "	28,875,	Nov. 30, 1891,	to	" "	9,259 25
" "	7,500,	Apr. 23, 1892,	to	" "	2,222 50
	Total				78,690 49

NOTE.—The claim of the Colombia-Cauca Co. is for interest on $250,000, from Oct. 15, 1890, to Apr. 4 1897, at 6 per cent., $97,041.66.

Group 4, d-2. Interest on the bond issue.

The total amount of paid up subscriptions to the bonds, as per ledger, pp. 1-62, was $124,750 02; $7,499 98 remaining unpaid.

The bonds bear interest from March 1, 1893, and were sold at 50 per cent. of the face value. The par value of the paid up bonds would be 124,750 02 × 2 = 249,500 04.

Interest on 249,500 04 from March 1, 1893, to April 4, 1897, at 6 per cent.	61,252 26
The interest on the amount actually paid in would be one-half of this, or	30,626 13

NOTE.—The claim of the Colombia-Cauca Co. is for interest on $264,500, from March 1, 1893, to April 4, 1897, $64,934.75.

(1105) LIABILITIES OF THE CAUCA CO.

Sold 6 per cent bonds amounting to	264,500 00	
Deduct amount not paid for, 833.31 × 6666.67 = 7499.98 × 2 =	14,999 96	
Balance bonds outstanding	249,500 04	
Fifty per cent. of this amount has been paid and accounted for in the "Construction" accounts	124,750 02	
Balance 50 per cent. due to the bondholders to be paid by the Cauca Co.	124,750 02	
Liabilities		124,750 02

RECAPITULATION.

Cost of construction	670,789 37	
Interest on capital stock	78,690 49	
Interest on bond sales	61,252 26	
Liability on acct. of bonds, 50 per cent. of sales	124,750 02	
Total cost and liabilities		935,482 14

CAPITAL.

Group 4, d-4, d-5. Total subscriptions to the capital stock as per ledger, pp. 1-60	213,875 00
Total subscriptions for the Cauca bonds, series being at 50 per cent. of par value	132,250 00
Forward	346,125 00

(1106) Brought Forward $346,125 00

Itemized cash payments to subscriptions on capital stock.

1890 Oct.	Cash		50,000 00		
Nov. 25.	"		5,000 00		
Dec. 2.	"		7,000 00		
1891 Jan.	"		9,200 00		
Mar.	"		7,450 00		
Apr.	"		25,935 00		
May	"		41,915 00		
July	"		9,200 00		
Aug.	"		5,950 00		
"	"		7,750 00		
Sept.	"		5,500 00		
Oct.	"		7,550 00		
Nov.	"		8,400 00		
Dec.	"		9,225 00		
1892 Jan.	"		2,250 00		
Mar.	"		750 00		
Apr.	"		7,500 00		
				210,575 00	
1890 Oct. 5th.	Stein & Calman, legal services.			500 00	
1890 1892.	C. F. Schramme, on acct., salary and construction			2,800 00	
				213,875 00	

Itemized cash payments on Cauca Bond subscription.

1892 Apr.	Cash	11,166 66		
May	"	6,708 33		
June	"	1,666 67		
July	"	13,208 33		
			32,749 99	
	Forward			346,125 00

	Brought Forward			340,125 00
(1107)	Forward	32,749 99		
	Aug	15,875 00		
	Sept	7,000 01		
	Oct	17,291 64		
	Nov	12,374 97		
	Dec	5,833 34		
1893	Jan	8,000 08		
	Feb	9,625 06		
	Mar	166 65		
			108,916 74	
	J. L. Cherry, Accts		10,833 32	
	M. Stine, "		2,500 00	
	David Calman, "		2,500 00	
			124,750 06	
	Less .04 overpayments and credited to Construction Acct		04	
			124,750 02	

Amounts still due on bond subscriptions:

Isaac Eppinger	833 31		
W. J. English	6,666 67		
		7,499 98	
		132,250 00	
Add Capital Stock as above		213,875 00	
Totals		346,125 00	346,125 00

Group 2, *c*–1. The balance sheet of the New York book show a balance still due

To J. L. Cherry			122,081 32
" C. F. Schramme		25,100 00	
" " (Special)		18,300 00	
			43,400 00
" Ledenburg Thalman & Co			636 11
" Fremont Wilson			200 00
Total indebtedness			166,317 43

Assets with waich to pay this indebtedness.
Cash on hand, $285.69.

NOTE.—The balance sheet from the ledger is found with the classified reports.

(1108) The salaries for Mr Cherry and Mr. C. F. Schramme have been allowed in my figures as found in the cash book, journal and ledger. The minute book of the board of directors should show the authority for them

In several instances when original bills or vouchers did not appear, I have accepted as evidence of payment, the cancelled checks drawn for the amounts.

Several of the drafts drawn by the Buenaventura office on the New York office are not among the vouchers; but in these cases the bank pass-books of Ladenberg, Thalman & Co., have been examined, and proper entries, as records of payment, have been found therein.

No vouchers were found for several accounts of Mr. Cherry, of large amounts, although the accounts are itemized in the journal and the bookkeeper states that they were taken from the statements of Mr. Cherry and Mr. Blum, the Assistant Manager.

See especially.

Journal page 44, J. L. Cherry, credit.....		$9,125.40
"*a*. Interest on $13,232. Jan. 1, 1892–Nov. 29, 1894, 6%		1,526.00"
"*b*. " " 135,000. Nov. 29, 1894–May 29, 1895, 6%		4,050.00"
Journal page 51, J. L. Cherry, credit		$9,533.33
"*c*. Interest on 1000,000., 6%, from May 29, 1895–Dec. 31, 1896, being balance due about on his contract of $135,000."		

See Journal page 44.

d. For items of missing voucher No. 130, J. L. Cherry's expenses to Bogota, 18,348-93, a part of which, 15,020.90 is stated as approved by the Board June 9, 1896.

In all cases where no vouchers appear, it is so stated on the sheets of the classified report.

14. The cash remittances made by the Buenaventura office to the New York office, as shown in the New York ledger, page 93, were:

(1109)

Sep. 4, 1894.....	800.00	
April 5, 1897.....	1,800.00	
April 8, 1897	873.42	
		3,473.42

Cash remittance to the New York office, and credited to J. L. Cherry's personal account as per ledger pages 97, 115 and 116,

Sept. 1892	1,132.11	
May 1894	6,906.04	
June 1895	532.66	
July 1895	3,821.63	
Oct. & Nov., 1895	4,065.73	
Mar. 1896	1,200.00	
Apr. 1896	1,000.00	
June 1896	1,000.00	
Aug. 1896	1,500.00	
Dec. 1896	200.00	
		21,158.17

Both of these amounts have been accounted for under the head of "Construction" ledger, page 150.

The total balance of the "Buenaventura Office Account" which includes the above two amounts, is 166,-132.61.

The greater part of this amount was paid to Mr. Cherry.

SOUTH AMERICAN BOOKS.

The total amount of bills drawn by the Buenaventura office on the New York office, as shown by the New York ledger, page 113, is	143,431 18
The balance of the "Draft Act," page 6, Buenaventura ledger, is	143,345 68
Difference	85 50

All except two of the drafts, as they appear in the *the* New York books, have been checked in the Buenaventura books, viz.:

(1110)	
Nov. 7, 1892, F. Menotti	400 00
Nov. 7, 1892, B. Lopez & Co	1,500 00

But as totals are often given in one ledger, and subdivided amounts in the other, it is possible that these two drafts appear in the Buenaventura cash-book and ledger, although it was impossible to recognize them.

The $50,000 deposit returned by the Colombian Government in Libranzas appears as a total charged to C. H. Simmonds, Banker.

Up to Oct. 31, 1893, C. H. Simmonds is debited in Colombian money with.	104,535 50
And credited with, in Colombian money	44,535 50
Balance on deposit with Simmonds, Oct. 31, 1893.....	60,000 00

The Buenaventura books were kept in Colombian money, and ended Oct. 31, 1893.

Separate accounts of the Construction Expenses and the Operating Expenses were not kept and the division cannot now be made.

The payments on pay-rolls and other items appear as totals.

Reference to the balance sheet of the ledger, bound with the classified reports, will show a few approximate

ESTIMATES OF COST OF OPERATION AND CONSTRUCTION,

to Oct. 31, 1893, Colombian money.....		551,822.69
Receipts from operaiton, freight, tickets, mdse. and manufacturing, and allowing that the receipts equalled the operating expenses...		177,959.78
Balance, expended in construction....		373,862.91
373,862.91÷1.90, Average rate of exchange, in American gold.....		196,769.91
Drafts on New York.....	143,431.18	
Return of $50,000. deposit, although it was not all applied up to this date.....	50,000.00	
	193,431.18	

(1111) As these amounts are nearly equal, I take it that the money was expended in construction. This, however, is only an estimate, and not positive evidence.

Group 2, b–1. What became of the proceeds of each draft does not appear in the evidence of the books.

Group 2, b–2. A detailed statement of the application of the $50,000 deposit returned by the Government cannot be ascertained from the books.

14. The Buenaventura books intimate, without positively declaring, that the proceeds of the drafts on New York, or their equivalent, were expended upon construction. To verify this, and to separate the operating expenses from the construction expenses, reference must be made to the pay-rolls, bills for materials purchased and

other papers, which vouchers, I am informed, were destroyed by fire.

14 continued.

The books indicate receipts from the operation of the road from Jan. 1, 1891, to Oct. 31, 1893:

Freight, Colombian money	160,914.70
Tickets, " "	13,241.70
Total	174,156.40

The net proceeds cannot be determined from the books.

There is no division or mention of the revenue derived from the section of the road between Buenaventura and Cordova.

14 continued.

I do not find any figures relating to the amounts collected from the Government on account of guarantee.

(1112) CONSTRUCTION.

	Receipts.	Payments.
From capital stock subscriptions	213,875 00	
" Bond Subscrictions	124,750 02	
" Balance Buenaventura Office acct	166,132 61	
Group 1. Administration administration at New York		16,005 10
" 2. Construction	308,559 41	
Less amount due Wilson	200 00	
		308,359 41
Group 3. J. L. Cherry		140,944 05
C. F. Schramme		25,088 99
S. C. Schramme		4,056 42
" 4. Financial	10,054 08	
Less Amount due L. T. & Co.	636 11	
		9,417 97
Balance cash on hand		285 69
	504,757 63	504,757 63
Payments made on Construction		504,471 94
Balance due F. Wilson		200 00
" " Ladenburg, Thalman & Co.		636 11
" " J. L. Cherry		122,081 32
" " C. F. Schramme		43,400 00
Total Cost		670,789 37

July 15, 1897.

Respectfully submitted,

EDGAR S. BARNEY,
No. 36 Stuyvesant St.,
New York City.

New York, July 21st, 1897.

Edgar S. Barney, Esq,
203 West 52nd St., City.

Dear Sir,—In accordance with your request at to-day's meeting, I beg to send you herewith a memorandum of what the Commission required from you regarding your report.

1.—Mr. Robertson wished you to put a mark or initial on your detailed report, against such items that (1113) according to your classification went to make up the $308,359.41 of the construction group at page 2 of your report.

2.—Mr. Robertson: "Will you please look at the books and then state how much cash was paid to Mr. Cherry and what he got, in detail, in other values, in order to leave this balance due to him $122,081.32.

3.—Mr. Stine asked if there was any substantial difference between the statements of Mr. Cherry and Mr. Blum and the entries in the books, you replied that you had not done enough work on them—the statements—to tell that, so he asked you to "do so and see what you can make of them."

4.—Mr. Stine asked if the books did not show that large advances had been made by Mr. Cherry to the Company prior to the Company having paid him the sum of $164,297.08. You replied that on the face of the account this appeared to be the case. Mr. Stine then asked you to make up a detailed statement showing what advances had been made to the Company by Mr. Cherry, either in the way of loans or otherwise, before the Company paid him this sum of $164,297.08.

I trust this will be clear to you. I presume that for the first point you will require your detailed report so I send it herewith, but as Mr. Cisneros has some work to do on the same, I shall thank you to return it to me at your early convenience in order that I may send it to him.

Yours truly,

(Signed) HAROLD R. MILLER, Sec.

New York, July 24th, 1897.

THE COLOMBIA-CAUCA ARBITRATION COMMITTEE.
LEWIS M. HAUPT, Chairman.

Dear Sir: In accordance with the request of your secretary under date of July 21, 1897, I beg to report as follows:

(1114) 1 The pages in my classified or detailed report making up the $308,559.41 have been marked with initials ESB.

2 A report of Mr. Cherry's "Personal Account" and as President of the Company, will be found on other sheets accompanying this paper. The account is rendered somewhat in detail and yet sufficiently condensed so that, I think, the gentlemen will obtain, at a glance, the information desired.

3 In answer to Mr. Stine's question, I will say that I do not find any "Substantial difference" between the statements of Mr. Blum and Mr. Cherry, and the entries in the books.

Mr. Cherry's "General Account" in the Ledger includes only the draft account of 143,431.18.

Mr. Cherry "Subscription Account" in the Ledger relates only to his subscription to the capital stock and the bonds, as follows:

1890.	Nov. 15 Subscription.....		20,000.00
1892.	Jul 31 Subscription to Bonds, 50%.....		15,000.00
1890.	Nov. Sep. 91 Cash Payments.....2,000.00		
1892.	Sep. 7–1893. Dec. 30. "Personal Account" debited.....		
"Subscription Account" credit.....10,833.32			
1892.	Oct Cash..... .....4,116.68		
		35,000.00	35,000.00

4 In answer to Mr. Stine's question, I would respectfully refer to the report, on separate sheet, of Mr. Cherry's Acct.

A detailed statement of Mr. C. F. Schramme's "Personal Account" is also presented although not requested in the Secretary's letter.

Respectfully submitted,

(Signed) EDGAR S. BARNEY.

(1115) J. L. CHERRY "PERSONAL ACCOUNT."

DR. DEBITS.

1892.			
Sep. 29.	Payment for trunks, charged to J. L. C.—Trav. Exp.		15 00
1896.			
July 3.	Payment of Smith, Worthington & Co., Bill charged to J. L. C., Trav. Exp., C. B. 99		70 00
1891.			
Aug. 1.	Cash, private account	CB 13 L. 97	15 00
Aug. 21.	Cash, private account, R. McNaughton	CB 15 L. 97	15 00
Aug 21.	Cash, private account, Array & Grove,	CB 15 L. 97	4 50
Oct. 31.	Cash, private account	PCB J-g2 L. 97	6 00
1892.			
March 3.	Draft	CB-27 L. 97	1,000 00
Apr. 22.	Cash, J. Hamilton	CB-29 L. 97	20 00
Apr. 23.	Cash	CB-29 L. 97	100 00
Apr. 26.	Cash	CB-29 L. 97	1,000 00
May 6.	Cash, account salary	CB-33 L. 97	1,000 00
June 6.	Cash account	CB-35 L. 97	400 00
July 6.	Cash, Mrs. Cherry	CB-39 L. 97	400 00
Jul. 31.	Cash, transfer from general account of 1,000 given him	J-12 L. 97	1,000 00
Jul. 31.	Cash, account salary	J-13 L. 97	3,500 00
Sep 7.	Subscription, 1st installment $16\frac{2}{3}$ per cent. of 30,000 Cauca Bonds	J 17 L. 97	2,500 00
Sep. 6.	Cash, on account	CB 47 L. 97	200 00
Sep. 20.	Cash	CB 47 L. 97	250 00
Oct. 4	Cash, Mrs. Cherry	CB 51 L. 97	400 00
Nov. 10.	Cash, Mrs. Cherry	CB 55 L. 97	400 00
1893.			
Jan. 31.	Cash, account salary	CB 63 L. 97	400 00
Feb. 28.	Cash, account salary	CB 65 L. 97	400 00
Oct. 12.	Cash, storage on silver	CB 73 L.	8 00
Dec. 30.	Transfer of amount due on bond subscription	J 26 L. 97	8,333 32
1894.			
May 21.	Cash	CB 79 L. 97	1,000 00
1896.			
Apr. 15.	Bot draft J. J. Lindaner	CB 97 L. 97	300 00
1893.			
Dec. 8.	Cash, Mrs. Cherry	CB 59 L. 97	400 00
	Forward,		23,137 22

(1116) J. L. CHERRY'S "PERSONAL ACCOUNT."

Dr.		Debits.		
		Forward from Page 1..		23,137 22
1893.				
Nov. 30.	From Mr Blum's statement this date. For sundry items see statement and Journal P. 41.		24,773 28	
1895. ( )	No date given, but from Blum's balance sheet apparently early in 1895 : From Mr. Blum's statement, for items see statement and Journal P. 41....		24,113 74	
1895 6.	Nov. 95 Apr. 96. Statement of Mr. Blum For sundry items see statement and J. P. 42		28,063 10	
1894.				
Dec. 31.	Balance, see statement for items, also Journal P. 43		6,120 94	
1896.	Apr. Dec. Mr. Blum's statements, see balance sheet for several accounts, also Journal P. 50		54,099 60	
1895.	Apr. Oct. Mr. Blum's statement, for items see statement and Journal P. 42 f		27,126 42	
				164,297 08
				187,434 30
	Assuming that all of the "Financial Items" on the credit side of this statement, were paid or balanced amount..		46,490 25	
	Balance paid on account of "Construction Expenses"		140,944 05	
			187,434 30	
	Balance still due Mr. Cherry		122,081 32	122,081 32
			309,515 62	
				309,515 62

NOTE.—This 164,297.08 is made up, in the main, of cash, drafts, and gold dust.

(1117) J. L. CHERRY "PERSONAL ACCOUNT."

DR. DEBITS.

	Payment of Sundry items, Vouchers 75 & 133	85 40	
1891.	Cash, payments on private accts	40 50	
1892.	Payment. Cash, draft, checks and accts	12,170 00	
1893.	Payments, cash, drafts, checks and accts	9 541 32	
1893. Nov. 30.	From Mr Blum's statement for Sundry items see statement and J-41	24.773 28a	
1894. May 28.	Cash	1,000 00	
1894 Dec. 31.	Balance, see statement for items and J-43	6,120 94a	
1895 (—)	No date given, but from Blum's balance sheet apparently early in 1895: see statement and Journal 41 for items	24,113 74a	
1895. Apr. Oct.	Mr. Blum's statement: for items see statement and J-42	27,126 42a	
1895, 1896.	Nov. 25–Apr. 26. Statement of Mr. Blum: for sundry items see statement and J-42	28,063 10a	
1896.	Apr-Dec Statement of Mr Blum; for sundry items see statement and J 50	54,099 60a	
1896.	Apr. Bo't. draft J. J. Luidaner	300 00	187,434 30

NOTE.—The items marked "a" amount to $164,207.08, and are made up, in the main, of cash, drafts, and gold dust.

Assuming that all of the "Financial Items" on the credit side of this statement were paid or balanced	46,490 25	
Balance paid on account of "Construction Expenses"	140,944 05	
	187,434 30	
Balance still due Mr. Cherry	122,081 32	122,081 32
	309,515 62	
		309,515 62

(1118) J. L. CHERRY "PERSONAL ACCOUNT."

		CREDITS.		CR.
1890.				
Dec. 1.	to Apr. 30, 1892, Salary @ 500 per mon.....	8,500 00		
1892.				
Apr. 30	to Jan. 31, 1897. Salary @ 1,000 per mon	57,000 00		
			65,500 00	
1890.				
Dec. 15.	Stockholders Meeting" Concession ..		135,000 00	
1897.				
Mar. 7.	Stockholders Meeting" Compensation		25,000 00	
1895.				
Aug. .	Expenses to Bogoto and Sundries			
	Travelling expenses approved.....	15,020 90		
	Sundry Items (Journal 43)..	3,328 03		
			18,348 93	
	"Directors Meeting June 9, 1896."			
June .	Jan., 1897. Expenses to Bogota, for item see Journal P. 53.			
	"Directors Meeting" Feb. 15, 1897		9,835 00	
1896.				
June .	Travelling expenses, Sundry items, Journal P. 44.....	806 10		
	Interest " " "	5,636 00		
	Sundries " " "	2,593 30		
			9,125 40	
1897.				
Apr. 10.	Sundry items, Journal p. 55.		216 15	
1892.				
Sep. 29.	Bazar du Voyage, Voucher 75.....		15 00	
1896.				
June 29.	Smith, Wortington & Co, Voucher 133.....		70 40	
1892.				
July 30.	Travelling expenses, Vou. 57.....		934 49	
				264,045 37

The above items are those in my detailed report.

(1119) "J. L. CHERRY CREDIT, FINANCIAL ITEMS."

These items seem to be mainly in the nature of loans or advances; except two items, one of traveling expenses to Europe and one of interest.

1892.				
Sep. 7.	Cash from sale of gold dust.	CB 46	1,132 11	
1893.				
Aug. 15.	Expenses on trip to Europe to place Cauca Bonds. (Entered in my report under "Administration at New York")	J 22	1,250 00	
	Loan account	J 22	500 00	
1895.				
Apr. 1.	C. F. Schramme, Loan acct. for sundry item see	J 30	6,855 69	
May 2	Draft	CB 88	3,000 00	
May 27.	Cash, checks	CB 88	3,706 04	
	Forward to next page		16,443 84	264,045 37

(1120) J. L. CHERRY "PERSONAL ACCOUNT."

			CREDITS.		Cr.
		Forward from Page 1.		16,443 84	264,045 37
1895.					
May 31.	J. L. Hutchinson, Loan acct	J 31		1,000 00	
June 20.	E. P. Gray, Loan acct	J 32		1,000 00	
June 20.	Cash, check	CB 90		532 60	
July 12.	Cash, check	CB 92		1,464 30	
July 26.	Cash	CB 92		2,357 33	
Oct. 7.	Cash	CB 94		1,612 64	
Oct. 31.	Cash, check	CB 94		1,000 00	
Oct. 31.	Cash, draft	CB 94		1,000 00	
Nov. 1.	Cash	CB 94		160 00	
Nov. 1.	Cash	CB 94		10 00	
Nov. 1.	Cash, check	CB 94		283 00	
1896					
Jan. 31.	C. F. Schramme L.200 paid by Cherry to Sch	J 36		972 50	
Mar. 24.	Cash, check	CB 96		1,000 00	
Mar. 26.	Cash, check	CB 96		200 00	
Apr. 14	Cash, check	CB 96		1,000 00	
June 3.	Cash, check	CB 98		1,000 00	
June 3.	J. L. C. Loan acct Loans 1,000. J-43. interest 62.07			1,062 67	
June 27.	Cash, check	CB 98		1,500 00	
Aug. 22.	Cash, check	CB 98		1,500 00	
Nov. 6.	Cash, draft	CB 100		320 00	
Nov. 13.	Cash, draft	CB 100		500 00	
Dec 9	Cash, draft	CB 100		200 00	

NOTE.—The last three were credited to Cherry twice in the Ledger, hence the deduction from the *Sundries* in my detail report.

1897 March.	Return, over credits			1,020 00
				263,025 37
1896. Dec 31.	Buena. Office, for Sundry items see J 51		837 89	
Dec. 31.	Interest on 100,000, 6 per cent., May 29. '95. Dec. 31. '96. Placed under Interest acct. in my detail report		9,533 33	
			16,490 25	16,490 25
				309,515 62

(1121) J. L. CHERRY, "PERSONAL ACCOUNT."

CREDITS. CR.

1890. Dec. 1.	To Apr. 30, 1892. Salary @ 500 per mon.		8,500 00		
1892. Apr. 30.	To Jan. 31, 1897. Salary @ 1,000 per mon.		57,000 00	65,500 00	
1890. Dec. 15.	Stockholders' meeting Concession			135,000 00	
1897. Mar. 9	Stockholders' meeting, Compensation			25,000 00	
1895. Aug. .	Expenses to Bogota. Approved. Directors' meeting June 9, 1896		15,020 90		
	Sundry items (Journal 43)		3,328 03		
1896.	June 1897, Jan. Expenses to Bogota. Directors' meeting, Feb. 15, 1897. J-53			6,835 00	
1896. June .	Traveling expenses	J-44	896 10		
	Interest		5,636 00		
	Sundries		2,593 30	9,125 40	
1892. July .	Traveling Expenses Voucher 57			934 40	
	Sundry items Vouchers 75 & 133			85 40	
1897. Apr. 19.	Sundry items	J-55		216 15	264,045 37

The above items are those in my detailed report.

(1122) J. L. CHERRY, CREDIT, FINANCIAL ITEMS.

These items seem to be mainly in the nature of loans or advances, except two items, one of traveling expenses to Europe and one of interest.

1892.				
Sep. 7.	Cash.....CB-46	1,132 11		
1893.	Traveling expenses to Europe, entered in my report under "Administration at New York".....	1,250 00		
	Cash.....	500 00		
1895.	Sundry accts, cash, drafts and checks.	23,981 75		
1896.	Sundry accts, cash, drafts and check.	9,255 17		
Dec.	Buena. Office, Sundry items..... J-51	837 89		
Dec.	"Interest on 100,000 @ 6 per cent, May 29, 1895, Dec. 31, 1896." Placed under int. in my detail report.....	9,533 33		
		46,490 25		
1897.	March. Return over credit, deduct ..		1,020 00	
			203,025 37	
			46,490 25	
			300,515 62	

(1123) C. F. SCHRAMME "PERSONAL ACCOUNT."

DR. DEBITS.

1890.	189. Acct. subscription to capital stock, construction and expense items	552 37		552 37
	Salary	2,247 63	2,247 63	
		2,800 00		
1891.	Payment on acct. Salary		3,000 00	
1892.	Payments on acct. Salary		1,952 37	
1893.	Payment on acct. Salary		1,050 00	
				8,250 00
	Sundry Items pertaining to Trav. Expense		26 75	
1893.				
May 29.	Transfer of Script, Atlantic Mut. Ins. Co. to C. F. S. credit "Construction Acct," J-20		200 00	
1894.	Cash 1,000, Bal. Buena office 212 51		1,212 51	
1895	J. L. Cherry, Sundry items		6,855 00	
	Cash		5,663 58	
1896.	J. L. Cherry, Sundry items		972 50	
	Cash		3,727 42	
	Cash for traveling expenses, CB-99		50 00	
1897.	Cash		1,905 00	
				20,613 45
				29,415 82
	Assuming that all of the items on the credit side of this sheet called "Financial Items" were paid or balanced	4,326 83		
	Balance paid C. F. S. on acct. "Construction Expenses"	25,088 99		
		29,415 82		
	Balance still due Mr. C. F. Schramme	43,400 00		43,400 00
		72,815 82		
				72,815 82

(1124) C. F. SCHRAMME "PERSONAL ACCOUNT."

			CREDITS.		CR.
1890 1897.	Salary @ 300 per month		22,950 00		
	Extra salary claimed from May 1, 1892, to May 31, 1897, 61 mos. @ 300		18,300 00		
					41,250 00
1897.					
March 7.	Stockholders' meeting, Compensation				25,000 00
1891.					
Oct. 20.	Trip to Colombia	J-9	537 24		
1896.					
June 26.	Traveling expenses	CB-99	50 00		
1897.					
Feb. 15.	Trip to Bogota. "Directors' meeting Feb. 15, 1897."	J-54	1 625 00		
	Sundry items pertaining to traveling expenses		26 75		
					2,238 99
					68,488 99

The above are the items included in my detail report.

FINANCIAL ITEMS.

The following seem to be mainly in the nature of advances or loans except the first two.

1891.	Sundries	L-13	15 13	
1893.	September, traveling expenses to Europe, included in my detail report, under "Administration in New York,"	J-22. L-90	1,250 00	
1893	Cash accts. and loans, C B and J entries		1,200 00	
1984.	Cash acct. and loans		1,006 78	
1895.	Cash acct. and loans		203 50	
1896.	Cash acct. and loans		651 42	
				4,3 0 85

The above does not include many items of loans or advances that were paid or balanced within a short time.

72,815 82

Report of President.

(1125) Buenaventura, Colombia, Dec. 1st. 1893.

To the Directors and Stockholders of the Colombian Construction and Improvement Company.

Gentlemen: I beg to present for your consideration the following information about the "*Ferrocarril del Cauca.*"

Length of Road.

The completed portion of the road was officially measured on Nov. 10th, 1893, by the prefect of this department, upon request of the General Government at Bogota. The total length from Buenaventura to the new terminus at San Jose, was ascertained to be 36.691 kilometers exclusive of sidings or switches, and a certificate to that effect was issued.

The Company has expended in its work, approximately, in cash, as per statement of Treasurer Sept. 30th, 1893, the sum of..... $341,534.64

And receipts from traffic January 1st, 1891 to Nov. 1st, 1893..... $174,168.70

Colombian paper or in gold at 100% exchange 87,084.35

Total sum expended $428,618.99

Distribution of Expenditures.

I approximately classify the expenditures of the Company in gold as follows: Including work done at Buenaventura.

Constructing 16.691 kilometers.....	$204,850.00
Repairs on old line 34 months.....	$56,500.00
Operating road since Jan. 1st. 1891	**$28,840.00
Surveys to Cali.....	$25,200.00
Erecting Steel Bridges.....	$27,500.00
Construction beyond San Jose.....	$43,500.00M
Materials and Supplies on hand.....	$45,000.00
Total.....	$431,390.00

(1126) Total Cubic Yards—Earth and Rock.

The total of cubic yards of work on the completed portion of the road is, approximately, as follows:

On part of line constructed by Cisneros and Government:

Earth, Excav. & Fill	164,564	cubic yards.
Hard Pan (Blasting)	29,158	" "
Total	193,722	" "

On part of line constructed by Colombian Construction & Improvement Co.:

Earth, Excav. & Fill	54,875	cubic yards.
Conglomerate (Blasting)	131,375	" "
	186,250	" "

Comparison. Summary.

Work. Total work by Cisneros & Gov	193,722	c. y.
Cisneros " " " C. C. & I. Co	186,250	c. y.
C. C. & I. Co. Excess by Cisneros and Gov	7,472	c. y.

* On page 4 I have allowed for operating expenses 40% of receipts, or a total of $34,833.74, to Nov. 1st, 1893. This is excessive blasting Of work by C. C. & I Co. more than 70% was rock work and required blasting by dynamite.

Total time consumed by Cisneros for 20 kil.	8 years
Total time consumed by C. C. & I. Co. for 16.4 kil	2½ years
Cost of 20 kil. by Cisneros, gold basis, more than	$2,250,000
Cost of 16.691 kil. and rebuilding line of Cisneros by the C. C. & I. Co., gold basis	$ 431,390

This comparison is not completed without knowing that Cisneros had the Colombian Government for a partner, and that, in addition to having its treasury constantly open to him, he had the Government's power and authority in (1127) procuring laborers, supplies, &c., to help him.

TRAFFIC RECEIPTS.

The traffic receipts of the completed portion of the line 36.691 kil. are as follows, in Colombian money:

Freight from Jan. 1st, 1891, to Nov. 1st, 1893	$160,920 40
Passengers, from Jan. 1st, 1891, to Nov. 1st, 1893	$ 13,243 30
Total income from traffic	$174,168 70
Or in gold at 100%	$ 87,084 35
Forty per cent. of this amount being deducted for operating expenses (see margin note on page 2)	$ 34,833 74

TRAFFIC PROFITS.

Leaves the net profit of traffic up to Nov. 1st, 1893 at in gold $52,250.61.

NET PROFITS. Assuming that the cash capital invested by the Company, to-wit, $341,534.64, would show an average period of use of, say, 2 years at 6 per cent. interest, the Company's operations would require to produce a profit of $40,984.15 in order to meet this amount.

The return of the amount invested is, however, much greater, as follows:

Net earnings above operating expenses, gold...	$ 52,250 61
Subsidy from Colombian Gov. to July 1st, 1893, gold	$ 47,962 07
Interest paid by Government on $50,000 deposit, gold	$ 3,512 28
Subsidy from Govt., July 1st, 1893 to Jan. 1st, 1894, gold	$ 16,992 55
Total profits.	$120,717 51

(1128) Or more than 35%, or over 17.5 per cent. per annum in gold.

NET PROFITS 1894. The net profits of 1894 may be safely estimated as follows: On the 36.691 kilometers now in operation.

Traffic at $7,500 per month Colombian	***$90,000
Or in gold at 100%	$45,000
Less 40% estimated operating expenses	$18,000
Leaving net profit on traffic..	$27,000
Add subsidy on 16.691 kil. at $1,900 per kilometer.	$31,712
Total profit 1894	$58,712

Or in excess of 17 per cent. on actual cash invested, or on cash and profits now actually invested, to wit: $393,785.25, an annual return or interest of more than 14½ per cent.

(***The traffic for 1894 will, in my opinion, exceed $8,500 Colombian or $4,250 gold per month. J. L. C.)

OPERATING EXPENSES.

The sum that I have allowed for operating expenses, to wit: 40 per cent., or approximately $1,500 gold per month, is more than ample. Our actual operating expenses to date have not exceeded 33 per cent. I am aware

that managers of extensive railroad systems in the United States and Europe claim to spend 50 to 60 per cent. of receipts for operating expenses. But it is also true that in their classifications of operating expenses appear many items of expenses that we do not incur, owing to locality and character of our road, such as cost of fences and crossings, damages to passengers and freight, salaries of agents and solicitors; and for agencies, charges for taxes, insurance and telegraph lines, and also higher legal and office expenses, and more liberal salaries. These extra items of operating expenses average, as per return of 14 principal trunk lines of U. S., more of 30 per cent. of their total operating expenses. It should also be remembered in this (1129) connection that we are required to run trains for passenger and freight traffic only three days per week, which materially reduces operating expenses.

TRAFFIC. Several causes have worked to cut down our traffic below its legitimate limits during the past two years, but principally during the months between July 1st, 1892, and September 1st, 1893. Low cuts in the Cauca Valley, quarantine against cholera, financial disturbances affecting exchange, and, most serious of all, competition by canoe traffic on the Dagua River. This last cause is entirely eliminated by the opening of the extension to San Jose, the result of which can be seen in our increased receipts. The other causes seem to be disappearing, excepting that there is very great demand for exchange, and imports are paralyzed temporarily on account of its scarcity. In this particular our active renewal of construction would be of great benefit and increase our traffic to $12,000 Colombian or more per month. The increase in coffee shipments is quite apparent, due to new coffee plantations coming into bearing, and coffee trees are being freely planted.

We may hope, also, for an increase in cocoa shipments, and merchandise must shortly come in more freely, as stocks are greatly depleted.

WEIGHT OF RAILS. On the completed portion of the line three types or sizes of rails are used, viz.:

From Buenaventura to Cordoba, a distance of 20 kilometers, rails weigh 30 pounds per yard.

From Cordoba to Caballete, a distance of 9 kilometers, the rails weigh 35 pounds per yard.

From Caballete to San Jose, a distance of 7.4 kilometers, the rails weigh 40 ponnds per yard.

The 30-pound rails have been in use continuously for 10 to 15 years, the first of these being laid in 1878. They

are now badly bent, twisted and worn by the constant service. Many of the curves on this part of the line have, however, been railed with the new 40-pound steel rail, new curve blocks, new ties, and new ballast. It is my intention (1130) to remove all the 30-pound rails as rapidly as repairs are made, and replace them as fast as we can with 40-pound rails, if we have enough of these, or otherwise, with 35-pound rails.

TIES. There are an average of over 3,000 per mile of road. We formerly paid 40 cents Colombian (20 cents gold) per tie of 4 in. x 5 in. x 6 feet, and, ignorance of the quality of the native woods, many of these were of inferior quality. We now pay 20 cents Colombian (14 cents gold) per tie, 5 in. 6 in. x 7 feet, and we accept nothing but Guayacan or Nato (*lignum vitæ* or bastard mahogany) which gives good service for from 6 to 10 years, according to all I can learn.

COST OF RENEWING TIES. From careful observation I estimate cost of renewing ties as follows, in gold:

Cost of new ties, 28 cents Colombian.....	14	cents gold
" " loading, 3 cents "	1.5	" "
" " transportation, 10 cts. "	5	" "
Total at track.....	20.5	cents "
" " putting in place 28 cents Colombia..	14	" "
	34.5	" "

The average cost in the United States railroads, as per competent authorities, is as follows:

Cost of new tie.....	75	cents
" " loading.	3	"
" " putting in track.	15 to 20	"
Total.....	93 to 98	"

" " transportation not stated.

GRADES. The heaviest grades on the completed line are as follows:

Loma Alta.....3	per cent	.....	..Length	1 kilomer	
San Cipraino 3.53	"	"	"	457	meters
San Cipriana 4.13	"	"	"	244	"
Dos Quebradas.....3.74	"	"	"	564	"
Dos Quebradas.....4.57	"	"	"	40	"
Santa Rosa.....3.70	"	"	"	457	"

(1131) All of these grades can be reduced materially when necessary, and some have, in the course of ordinary repairs and betterment, been already reduced, as notably those of San Antonio and Piedra Piedra. The 40 meters of 4.37 per cent. grades at Dos Quebradas can be cut down to under 4 per cent. at a cost of $1,200 gold.

But while it is advisable to keep down the percentage of grade as much as possible, consistent with cost of work, 5 per cent. or even 6 per cent. grades are no longer considered fatal or even detrimental by railroad authorities. I could give you a long list of railroads that use grades from 4 to 6 per cent., but eventually no grades on the Cauca Railroad need exceed three (3) per cent.

When I assumed the task of constructing the Cauca R. R., I announced that I would build it as cheaply as possible, for the immediate purpose of taking care of the traffic actually existing, leaving to the time when increased traffic would demand it the cutting down of grades, lengthening of curves, sloping of sides of cuts, and erecting of retaining walls and iron span culverts. I also said that when it proved necessary by an increased traffic to do this work, nature by its disintegrating process would save us much pick and blasting work. Almost every day proves the truth of this assertion.

Wellington, who as an authority on "The Economic Theory of Railway Location," is undisputed, says (p. 766): "Considerable amounts of distance, curvature, and rise and fall will not cause a dangerous loss in operation for a few years, if used only on the rougher sections as a substitute for more costly works later." He advises completing "lines good enough for several years' use, leaving the latter permanent line to be constructed when it is certain that the traffic justifies and requires it and means are available." Quoting further, he says, p. 761:

"As respects—distance, curvature and rise and fall, their effects to increase expense (of operation) are at best small, and when the traffic is very light, become very small. (1132) They are therefore one of the first directions in which close economy is warrantable for light roads. Much increase of expenditure to obtain lower grades than a careful study of the ground shows to be possible at a minimum expense, is not warrantable."

I have gone into this matter so fully because I am aware that some persons who have had no experience in railway building, and some engineers who have gained their knowledge on railways where an expenditure of $100,000 or more per mile of road was not considered extravagant, have criticised my policy, which has been to care for

the traffic existing, and make more permanent "betterments" out of capitalized profits. My system of construction is that which has been adopted by some of the most successful American and English railway engineers on similar lines, where time is required to fully develop traffic. I could quote many illustrations.

CURVES. The shortest curves on the completed line are 30 degrees, or a radius of 191 feet. Many roads in successful operation have sharper curves, and the New York Elevated R. R. runs daily about 1000 trains of four or more cars each around 63 degrees curves, or a radius of 92 feet. An eminent railway authority says, "It is certain that for a road to which economy in first cost is essential, the intelligent use of sharp curvature offers one of the simplest, most effective and most expedient methods of economizing in first cost."

But all the sharp curves on the Cauca R. R. can be lengthened or made easier when required without a great additional expense. In fact some of them have already been materially improved by the gradual slipping and widening of the hill sloped, and have proven the economy and advisability of my practice to let the slopes of cuts regulate themselves, after track is pushed through, instead of delaying, in each instance, to remove by pick or dynamite large amounts of material that will gradually loosen itself by action of rains and gravity, and be removed by (1133) the track maintenance force without delay in the work of construction.

Bridges There are a total of 69 wooden bridges on the completed line. They have a total length of 3,435 feet, and are classified as follows:

11	Bridges about	15	feet	long	
8	" "	20	"	"	
3	" "	25	"	"	
14	" "	30	"	"	
1	" "	35	"	"	
4	" "	40	"	"	
8	" "	45	"	"	
4	" "	50	"	"	
3	" "	60	"	"	
2	" "	75	"	"	
1	" "	80	"	"	
5	" "	90	"	"	
3	" "	120	"	"	(Santa Rosa, San Antonio, Venado)
1	" "	190	"	"	
1	" "	210	"	"	Coloradas
1	" "	240	"	"	Caballete

Many of these bridges will be entirely replaced, and others much shortened by culverts and fills of earth and rock, which were too costly to make and would have consumed too much time at the period of their erection. This work of filling in, is, in fact, already in progress, as notably at San Antonio and others.

These bridges are strongly built of pile bents driven to hard pan or conglomerate, and are similar to the timber bridges of the C. M. & St. P. R. R. Bents are 15 feet apart, and each bent comprises usually four upright piles and two batter piles with stout transverse and longitudinal sway braces bolted through uprights. The stringers on which the rails rest are of Guayacan (lignum vitæ) 30 feet long and 7 inches by 14 inches. Two of these stringers bolted together with broken joints are under each rail. (1134) These bridges are without mortises, so that each stick is renewable in detail. Each 15 feet span will carry a load of 110 tons.

Cost of Erecting Wooden Bridges. The cost of these wooden bridges are now, approximately as follows: being fully 50 per cent. less than when we first began to erect them. This reduction is due to cheaper timber, better facilities for handling, and, mainly to more experience and skill in our native workmen.

Cost of Erecting a 15 Ft. Timber Trestle, 15 Ft. to 30 Ft. High.

6 Piles Colombian money	$20.00
1 Cap	5.00
2 Stringers	22.00
8 Sway Braces	8.00
Square Cap & Stringers	10.00
Bolts, pins, nails, &c	5.00
Fuel for Pile Driver	3.00
10 Ties at 55c squared	5.50
Total Colombian money	$108.50

or per foot, $7.23 Colombian or $3.62 gold.

Steel Bridges. Three steel bridges are now in service, to-wit: A lattice girder bridge connecting Buenaventura Island with the main land, passing over an arm of the bay. It is 640 feet long with 8 span of 69 feet each, 1 span of 41 feet and 1 span of 56 feet, supported on iron piers sunk into the silt from 5 to 20 feet. The floor of the bridge is 20 feet above low water.

A new steel bridge completed February, 1893, crossing the very rapid Dagua river at San Cipriano by a clear span of 203 feet, and a similar bridge completed March, 1894, crossing the Dagua river at Sucre by a clear span of 170 feet. These last mentioned bridges are of the most modern type, and are supported at each end on two cylinders of 5 feet diameter filled with concrete. They have passed unharmed through several very fierce floods, thus proving their stability.

(1135) FLOODS OF DAGUA. This history of the bridging of the Dagua is interesting. At the date of our first inception of this work, no person connected with the undertaking had knowledge of the peculiar idiosyncracies of this river. From Dec. 13, 1890, to Oct. 29, 1891, the river remained quiescent, containing barely enough water at times to canoe over it. But on that date, owing to very heavy rains on the mountain slopes many miles inland, a tremendous wall of water came down without warning, carrying along large trees and other debris which lodged against the piles, and soon swept the bridge away, and, also, the half bridge at San Antonio. Several months elapsed before an attempt was made to rebuild the bridge, but, encouraged by continued low water, it was rebuilt and ready for passage of trains on Feb. 8th, 1892, and on Feb. 10th, 1892, was completely carried away by another flood. Being again erected, a flood from a terrific cloud burst on thy night of June 18th, 1892, swept it away and also the Sucre bridge just completed. These bridges were again erected and were only removed on the completion of the steel bridges. It will be noted that the floods in the Dagua came without previous warning and at no fixed time of season. It has been asked why these wooden bridges were rebuilt, when it was apparent that only an iron bridge completely spanning the river, without intervening piers or supports, could stand? There were two reasons:

1st. The necessity of providing for any traffic, so that we should not forfeit our subsidy, and

2nd. The steel bridges could only be erected by use of wooden bridges or "false work" (equally costly), such bridges being built from the center of the stream towards each bank, hence the necessity of the wooden structure. We were very fortunate to have no heavy floods while erecting the steel bridges across the Dagua, as, otherwise, the party completed steel structure, resting necessarily on the wooden pile bridge, would have been in great danger of being swept away. The steel bridges are believed to be

(1136) built high enough to be out of danger from trees carried down by floods. * * *

IRON MOLE. The iron mole at terminus of Buenaventura is 216 feet long and 22 feet wide, with platform 40 feet by 30 feet, and reaches to a depth of 12 feet at low tide, the rise of the tide being 14 to 15 feet. This mole should be extended as early as possible to a depth of 24 to 30 feet at low water. Before this is undertaken some modification should be negotiated in the terms of the concession procured for the building of this mole, or it should be built directly under the terms Article 30 of concession for railroad, which I believe is quite broad enough in its terms for all purposes required by us.

* * * Note. Since above was written, these bridges have passed unharmed through the greatest flood known in 20 years.

SHOPS. The buildings owned by the Company are as follows:

Stations. Blacksmith shop (partially burned in May, 1893, but now repaired) zinc covered building, 30 ft. x 40 feet, containing—

Buildings.—2 Stationary forges } and
2 Portable forges } accessories.
1 Steam hammer.
1 Brass furnace.
1 Root blower, belting, &c.
Blacksmith and furnace tools.
Machine shop. Zinc covered, 54 feet by 100 ft., containing
1 Stationary engine and boiler.
1 Kendall power borer.
1 20 ft. Kendall planer.
1 Power bolt cutter.
1 Power shaper.
1 Hydrostatic car wheel press.
1 Car wheel turning lathe.
1 Complete saw mill.
1 Power table saw.
1 Hand boring drill.
(1137) 1 Hand bolt cutter
Assortment of machinist tools and appliances, shafting, belting, &c.
Car shed. Zinc covered 2 tracks, 60 ft. by 30 ft.
1 Zinc covered building containing:

1 Cupalo furnace for iron casting 24 ft. x 24 ft.
1 Store house, zinc covered, 42 x 100 ft. containing: general assortment of railroad supplies.
1 Store house zinc covered, 30 x 53 ft. similar to above.
1 Train shed, 2 tracks, zinc covered 27 x 185 feet.
1 Locomotive house—zinc covered, 25 x 45 feet.
2 Powder Magazines, zinc covered.
1 Office building (Casa Colorada), 24 x 82 ft. with wings 20 x 24 ft. This building is two storied, the lower floor occupied by freight and passenger rooms, and the upper floor, divided into 13 compartments, occupied for general offices, sleeping and dining-rooms. This building is claimed by the Government, but I have filled out protest and am gathering evidence to prove that it has always been classed as railroad property. There are also:
3 Houses at Buenaventura and several at other points on the line for employees. Freight house and train shed at Coboba. Freigh house at San Jose, 33 x 150 feet.

STATIONS. The stations on the line are:

Buenaventura.
Cordoba 20 kilometers from Buenaventura.
Sucre 32 " " "
San Jose 36.6 " " "

(1138) SAN JOSE. The new station San Jose is well fitted for its purpose, and is picturesquely situated. Being at the foot of the precipitious mule grade of Pena de San Jose. It commands the traffic and provides good quarters for the hundreds of mules arriving and departing at this point with cargoes. It has its location, cut off the former mule traffic to Cordoba, for which purpose its location was carefully planned.

LOCOMOTIVES. The Company owns 4 locomotives as follows:

CALI. In service 10 years and now laid up. Believed to be unfit for further use.

POPYAN. In service 8 or 10 years. Has been in shop for new fire box and other repairs. Drivers are badly hollowed and having been turned some years ago, will not

stand it again. Her fixed wheel base is over 12 feet and, on this account, I do not advise repairing her, as to put her in good condition would cost 50 per cent. of the expense of a new and more suitable engine. (Dec. 31st, 1893—This engine is now being used daily to haul ballast and material, but cannot be relied on.)

PALMIRA. In fairly good condition although having one cracked cylinder. Now doing the entire traffic work of the road, and has done so for more than a year. If any accident should happen to the "Palmira" in our present situation of having no other suitable locomotive to replace her, we would probable have a serious complication with the Government, under Article 14 of the Concession.

CAUCA. A new locomotive purchased by us from Baldwin Locomotive Works and erected at Buenaventura. A powerful and perfect locomotive, but unfortunately too heavy to use on the line from Buenaventura to Cordoba. As I have been charged with making an error in ordering an engine too heavy for our road-bed, I beg to quote from contract with Baldwin Works.

"Weight in working order, total about 70,000 pounds; on driving wheels about 62,000 pounds."

The locomotive we received, weighs over 84,000 pounds, and this error could not be discovered until the various parts were unpacked and put up together.

(1139) I will shortly run the Cauca to San Jose to perform duty on that and where 40 pound rails are used and road bed is firmer.

I consider it imperatively necessary to procure, without delay, a locomotive as per my letter on this subject to your treasurer.

CARS. The Company owns and has in use three first-class passenger cars, one second-class passenger car and five box cars, including cattle car and five flat cars, also five push cars, some gravel trucks, velocipedes, &c. As stated in my letter to the treasurer, the trucks under most of the cars require renewing, having been in service a long time. The only car material ordered since our management, to-wit, 4 pair of trucks (8 trucks), are in use and doing excellent service. Our rolling stock should be increased as possible by the addition of material for five box cars, 5 platform cars, 2 cattle cars and 10 small push or hand cars, to be erected at Buenaventuras shops.

The speed of the regular passenger trains is fixed by order at 12 miles per hour, and of construction trains at not exceeding 10 miles per hour.

TIME OF TRAINS. Regular passenger and freight (mixed) trains are run Tuesdays, Thursdays and Saturdays of each week, but in the other days (except Sundays) trains run carrying construction material and ballast.

FREIGHT AND PASSENGER CHARGES (Colombian money).

Passenger 1st class	$2.25 or per mile.....	10	cents.
"	equal in gold to	5	"
" 2nd "	$1.50 or per mile.....	6.6	cts.
	equal in gold to	3.3	"
Merchandise $20 per ton, or per 100 lbs		$1.00	
In gold $10 " " " " " "		50	cents.
Salt $15 " " " " " "		75	cents.
In gold $ 7.50 " " " " " "		37.5	cts.

Thus Merchandise pays 44.4 cents, gold, per ton per mile and salt 33⅓ cents, gold, per ton per mile.

COST OF TRAFFIC. The daily cost of train for the round trip of 45 miles, including cost of loading freight of construction material and pay of freight agents is, approxi-
(1140) mately, as follows, in Colombian money.

Engineer.....	$ 6.00
Conductor.....	3.50
Firemen.....	2.00
7 Freight Brakemen	10.00
Fuel.....	8.00
Oil, waste, &c.....	3.00
Freight agents at Buenaventura and Cordoba	7.50
	$40.00
or gold.....	$20.00

making per mile per train 44.4 cents. Thus with locomotives (easily procurable) capabable of hauling a load of 44.4 tons, exclusive of weight of engine and cars, 1 cent per ton per mile would be the cost of transportation. This is over as heavy (or heavier) grades and as sharp curves as will exist on the entire line. As the haul increases in length this cost will be diminished per ton hauled per mile, as the same labor will serve for a longer haul.

TOTAL COST PER TON PER MILE. The above shows cost of transportation only. The total cost, including maintenance, administration, shop expense and repairs upon my estimate of 40 per cent of receipts now, or $1,500 per month gold, would be in round figures 1½ cents per ton

per mile on traffic of 45 tons per day each way for 300 days per year.

FUEL. The present cost of fuel for locomotives is exclusive, but cannot be reduced until the coal deposits are reached.

This fuel is from the mangrove tree, and is brought long distances from the swamps in canoes. The cost is $3.00 Columbian per cubic meter, 3⅝ meter is equal to 1 cord and one and one-half (1½) cords will equal 1 ton of coal, so that the equivalent of one ton of coal, to-wit, 5.½ meter of wood is now costing us $16.50 Colombian or $8.25 gold.

COST OF MAINTENANCE. The cost of maintenance of (1141) track is a very serious item of expense on the present line, but particularly on the part of line from Buenaventura to Cordoba. This is due to the excessive rains which occur daily and the rapidly growing vegetation.

The average annual cost of removing vegetation from the road bed and either side of it is $75 gold per mile. The total men now employed on the completed line is 60 laborers and 16 bridge carpenters, costing $2,670 per month, or per year approximately. $32,040
Add for 500 ties at 28 c..... 1,400
" Spikes and bolts..... 250
" bridge timbers..... 2,500

Total (Columbian).. ....$36,190

or in gold $18,095, being $804 gold per mile, or, adding clearing of vegetation, $879 gold per mile. Fully $400 per mile of this amount should be charged to reconstruction or betterment of old line in replacing light rails, strengthening bridges, ballasting old line, etc., leaving for actual maintenance $479 per mile per annum.

The cost in the United States is from $300 gold per mile on long established roads to more than $1,000 per mile on new lines requiring changes and ballasting.

The average in the United States per Trautwine is as follows:

For repair road bed and track per mile..... $451
" bridges repairs. 102
For renewal of ties. 122

Total..... .....$675

RAIN.—The rain fall of this coast section deserves special mention. The total per annum must exceed 40 feet. Compared with many other places in this is tremendous. I give following table from reliable authorities. Average rainfall in feet per annum.

(1142) The World	2 feet
U. S. East of Mississippi	4 "
State of New York	3 "
State of Louisiana	6 "
Philadelphia (average for 54 years)	3 4-5 "
Fort Kearney, N. C	3 1-3 "
Dallas, Oregon	1 1-6 "

Since my return here on November 1st the rainfall has been under the average, yet for the three days (November 14th, 15th and 16th), the rain gauge registered a total fall of 7.61 inches, and on one of these nights the gauge bottle overflowed before morning, so that I did not get the full record. On the 21st, 22nd, 23rd and 24th—four days—the fall was 9.36 inches or more than the total average fall in New York in three months. In 17 consecutive days in November the total rainfall was 25.87 inches on an average of more than 1.52 inches per day. Thus in 17 days we have had more than two-thirds of the average annual rainfall in New York. I am safe to assume that such a deluge of rain in New York or Pennsylvania would completely paralyze operations there, and entail losses to railroad maintenance of many million dollars.

HOUSE EXPENSES.—These will run per month, for cook, servants, supplies, light, fuel, washing, &c., to from $75 to $1.25, gold, according to the number of people provided for.

SUGGESTIONS, OLD LINE.—Our experience of almost three years in the maintenance of the track from Buenaventura to Cordoba forces me to the conclusion that it can only be satisfactorily supported and kept in good running condition at a reasonable expense by using coarse rock ballast to a depth from 1½ to 2 feet. Three-fourths of this old line rest upon spongy clay, which retains the heavy rainfall and allows the ties to penetrate into it under the weight of a train. We have improved the worst spots by using old ties longitudinally and gravel ballast from beyond Cordoba and by ditching closer to the road bed. But we need the (1143) heavier rock from beyond Juntas to form a solid bedding which the heavier rains will not melt into clay.

NEW WORK. Just beyond San Jose a steel bridge, 180 feet in length, will be required to span the Dagua. For 4 kilometers beyond this crossing considerable construction work has been done, representing possible three-fourths of the total work. Clearing is completed two or three kilometers further.

The distance from San Jose to Juntas per surveys is exactly 12 miles or 20 kilometers. The line to Juntas has been surveyed carefully and a good part of it cross-sectioned ready for graders. The work is 30 per cent. lighter than that from Cordoba to San Jose, and, otherwise is more favorable in having little of the very troublesome and expensive hard pan or conglomerate formation.

A small force of graders is now employed on this division, working altogether by contract or task work.

LABOR. I have frequently referred to the very unsatisfactory labor procurable here. I call your attention to this with additional emphasis now. The Cauca R. R. must follow in the footsteps of all Mexican, Central American and South American railroad enterprises (excepting possibly Chile) and import its labor; Chinese, Japanese, Jamaicans or East Indian Coolies must be brought in. Italians, Poles, Hungarians and Portugese are disturbers. Chinest are most desirable and cheapest. Natives and Indians may be utilized on the upper mountain portion and in the Cauca Valley, but they are almost worthless on the coast end. By the stoppage for a time of the construction I now have an opportunity to test the plan of paying each laborer, not per day, but by cubic yard of work performed. If this system can be enforced, the good laborer will receive his reward in increased earnings, and the laborer who shirks will get what he earns—no more. I have before tried to establish this system, but the natives took advantage of the scarcity of labor and refused to work under it. This is a good time to make another attempt as it will save 25 to 33 per cent. of the cost of grading. I am not sanguine of its success, as I do not think native labor will submit to it. But these natives would not do an honest day's work in any other way. The employment of Chinese labor is, in my opinion imperative.

(1144)

MONITORS FOR EXCAVATIONS. I believe a very great saving in all earth excavations or "pick work" can be made in all the work from Espinal to the Cauca Valley, and in much of the work from San Jose to Juntas by using "monitors" or "giants" as in hydraulic gold mines, to

do the excavating and filling in the places of laborers with pick and shovels. Any person who has seen a hydraulic gold gravel mine in process of working will understand this. Water can be led with any desired head or pressure through sections of riveted sheet iron pipes to the movable monitor, and. through its nozzle, against the bank or cut, the earth thus washed being carried in sluiceways to any desired point, or, if not wanted for a "fill," it can be "wasted". A monitor with a few men will do the work of hundreds of laborers. I might in this connection refer to the great ease with which the gold contained in the earth thus washed away could be collected in the sluiceways at almost no additional expense of labor. All such earth on the line of railroad contains more or less gold. Doubters should read the report of Government Engineers on their survey through the Cauca Valley for the proposed Pan American R. R. within the boundaries of concession of Cauca Railroad in which they affirm that the earth taken from the cuts to make the road will produce enough gold to pay the cost of building the railroad.

SUPPLIES. I cannot too forcibly advise the importation of all articles possible for construction and operating purposes, and the constant retention of a good supply in the store-houses. It is a fallacy to suppose that because native labor seems cheap, all articles that are made or grown here are cheaper than if brought from abroad. The lapse of time necessary to make or procure anything is in itself a serious loss, but the actual cost due to inferior hand labor, incomplete tools or facilities, waste or deteriation of raw (1145) materials from rust, mildew, &c., is always greater than cost of purchase abroad and importation. I refer to one instance from many in my knowledge. The cost in wages, coal and oil in making ⅞ inch bridge stay bolts (threading and heading only), not including iron or nut, is 12½ cents each. The labor in making a claw bar averages 40 cents gold, and common track wrench 75 cents gold. All materials that can be turned out or shaped by machinery should be imported.

The following are prices of articles which from necessity were purchased here.—Buenaventura.

Machiuery Oil	per Gal	.....	$3.00 Col.	$1.50	Gold
Kerosene	" "	.....	1.40 "	70	"
Linseed Oil	" "	.....	2.00 "	1.00	"
Round Iron	" pound	.....	12 "	06	"
Nails	" "	.....	30 "	15	"
1 Coil Rope	" "	.....	76 "	20	"
Lard	" "	.....	80 "	40	"

Our recent purchases in Panama were at following prices, gold basis:

Cylinder Oil per Gallon	$ 67½ cts. gold
Engine Oil " "	60 60 " "
¾ Round Iron " "	5½ " "
Nails " ponud	5 " "
Cement	7.00 per bbl.

Supplies for houses purchased here—Buenaventura—cost about as follows, gold basis:

Meat per lb	20 cts.
Sugar " "	20 "
Lard " "	40 "
Coffee " "	15 "
Rice " "	7½ "
Bread " "	10 "
Flour " "	7 "
Eggs each	2½ "
Chickens "	40 to 50 "
(1146) Salt per lb	5 cts.
Corn " "	5 "
Condensed Milk per can	$1.00
Canned Butter " "	75 "
Sardines per box	40 "
Claret " bottle qt	$1.00
Appolinaris " pint	25 "

TIMBER. I referred in a previous report to the advisability of using timber from California or Puget Sound. I am strongly convinced that there is economy in this. The native classes of timber suitable for bridges and buildings are so heavy and so expensive to handle and to square and frame that the fact of their doing service a few years longer does not compensate. A cubic foot of Guayacan (*lignum vitæ*) weighs 70 pounds, as against 45 pounds per cubic foot of southern yellow pine, and it sinks in water like iron. It is a mistake to suppose that good fir, Washington pine or California redwood decay quickly, or are eaten up by worm or ants. They are good for from 6 to 10 years.

Stringers of guayacan are difficult to get longer than 30 feet, as they require much squaring and hewing before being able to use them. A stringer 330 feet by 7 inches by 14 inches cost square in gold $8.00, or equal to $32.25 per M., board measure.

Rough measured boards cost $40.00 gold per M., and to properly dress them for use $20.00 additional.

I advocate the bringing of a cargo of bridge stringer and lumber for buildings and car construction from Puget Sound. The native timber is preferable for piles for bridges, uprights, caps, sills and ties.

RAILS. We now have on hand the following rails, approximately:

35 lb. rails for 2 miles of road.
40 " " " 1¾ " " "
30 " " " 2½ " " "
50 " " " 1 " " "

UNSETTLED. I have forwarded to Treasurer of Company my personal account in full to Dec. 1st, 1893.

Other unsettled accounts at Buenventura are, approximately, as follows:

(1147) December 1st, 1893:

Due M. P. Carter gold	$1,468.90
" Edward Blum "	924.30
" Kolb estate "	73.25
	$2,466.45

Due from C. H. Simmonds, deducting salary of Mallarino to December 1st, and amount due Dubarry to December 1st, which Simmonds, has probably paid, but for which we nave no advices, $4,700 Colombian gold...$2,350
From Sierra and Pallacios, in litigation, $2,000 Columbian Gold.....$1,000

$3,350

As the amount from Mr. Simmonds is not immediately available, we cannot rely on it to pay Messrs. Carter and Blum, which is urgent.

There is cash on hand December 1st about $3,000 Colombian.

CONCLUSION.—The cost of inaugurating and organizing an enterprise of magnitude in a country where so few facilities, and so many unforeseen difficulties exist, can only be understood by those who have lived through it. The many

unforeseen causes of expenditure like premium for labor that come only to desert you, or, worse to burden you and your hospital, cost of transportation for skilled employees who sicken and leave or who, once here, do not care to work and must be coerced, the almost unterminable run of feast days that interrupt construction, the utter worthlessness of much of the labor that seeks you, the floods and washed out bridges, and the unreliability of every person who contracts to perform labor or furnish supplies; all these are sources of delay, annoyance and cost. All of this only goes to prove that we "live to learn" and that the condition of (1148) no two localities are alike. We undoubtedly have had to encounter here difficulties and expenditures that the experience we have gained will enable us to profit by in future operations, and that no amount of previous experience elsewhere could have prepared us for.

But admitting such unavoidable or unforeseen extra items of expense, you will realize from the proceeding facts and figures some very gratifying facts, to-wit:

That under your management the miles completed have cost a very much smaller sum than under former administration.

That the road as completed is capable of carrying all the traffic that offers.

That the road may be made equal to any traffic by a reasonable additional outlay.

That although running trains almost daily for the past three years, no passenger has in the slightest manner been injured, nor piece of freight damaged.

I state to the shareholders that with the proceeds of $400,000 bonds at 50%, to wit: $200,000 and the $50,000 to be refunded from Government, in addition to previous payments for stock, I would reach Juntas or very near to it with rails. More than $70,000 of the amount proposed to be received from bonds was not paid in. Had I received this $70,000, it, with the income of road and funds then on hand, would have enabled me to do all that I had promised to do. The blame is upon the shareholders, who failed to pay their proportion of the Company's obligations.

I refer to my estimate of the completed road to Cali as per figures derived from engineer's surveys. After more investigation here and more very careful revision of the figures therein given I am positive that the line from San Jose can be completed to Cali for the sum stated, to wit: $1,300,000.

Very respectfully,

(Signed) J. L. CHERRY,
President and General Manager.

Buenaventura, December 1st, 1893.

(1149) BALANCE SHEET.

DECEMBER 30TH, 1893.

		Dr.	Cr.
6	Eppinger	$833 31	$
43	W. J. English	6,666 67	$
60	Stock subn. acct		$213,875 00
62	Bond		132,250 00
97	J. L. Cherry		564 78
102	R. R. Bauer	286 80	
103	Bills receivable		286 80
106	Tremont Wilson		200 00
108	C. F. Schramme Loan acct		4,650 00
113	Draft acct. J. L. Cherry	$143,431 18	
118	Libranza acct	50,000 00	
150	Construction acct	150,604 52	
	Cash in Bank	4 10	
		$351,826 58	$351,826 58

	Total Capital Stock		$2,000,000 00
of which outstanding		$1,951,000 00	
" "	1,711,000 sold at 12½ $213,875		
" "	240,000 pd. for concession.		
Total 951,000,			
Which leaves in the Treasury		$49,000 00	$2,000,000 00
Total Amount Subs'd to Cauca Bonds, 264,500 sold at 50 per cent.			$132,250 00
Cash pad in treasury acct. same		124,750 00	
Still due per I. Eppinger	833 31		
W. J. English	6,666 67	7,499 98	$132,250 00

To the Republic of Colombia, the Honorable John Sherman, Secretary of State of the United States, and The Cauca Company.

(1150) The Commission appointed under the convention of January 4th, 1897, which convention was entered into between the Republic of Colombia and the Cauca Company, having been duly organized on April 3rd, 1897, by all of the members appointed thereto, to-wit: Lewis M. Haupt, C. E., Manuel H. Pena, C. E., and Christian F. Schramme; and having had numerous sessions thereafter, at all of which the several members appointed to the said Commission were present and participated in the proceedings taken before said Commission; and the said Commission and the aforesaid several members thereof having examined the books of the Cauca Company with great care; and having heard all the witnesses produced by the Republic of Colombia and the Cauca Company, respectively; and having considered the arguments, both oral and written, and the various documents submitted for the consideration of said Commission; and all of the said Commissioners having united in deliberating with respect to the matters submitted to it pursuant to the terms of the said Convention; and the undersigned, constituting a majority of the said Commissioners, having reached the conclusion that the Cauca Company is entitled to be awarded the sum of Four Hundred and Fifty-two Thousand and Forty eight and 93-100 Dollars ($452,048.93) in gold coin of the United States of America in payment of its claim against the Republic of Columbia, which claim is the subject of the aforesaid convention:

Now Therefore, We, the undersigned, Commissioners constituting a majority of the aforesaid Commission, pursuant to the authority invested in the said Commission under the terms of the aforesaid Convention, hereby find that the Cauca Company is entitled to receive from the Government of Colombia on account of the matters referred to in said Convention, including the moneys already (1151) paid by the Republic of Colombia to the said Cauca Company, the sum of Six Hundred and Fifty-two thousand and Forty-eight and 93-100 Dollars ($652,048.93) in gold coin of the United States of America, of which sum the said Republic of Colombia has heretofore paid to the said Cauca Company the sum of Two Hundred Thousand Dollars ($200,000), leaving due and unpaid to the Cauca Company the sum of Four Hundred and Fifty-two Thousand and Forty-eight and 93-100 Dollars ($452,-

048.83) in gold coin of the United States of America, which sum we hereby award to the said Cauca Company, and which sum is to be paid by the Republic of Columbia to the said Cauca Company in the City of New York on the 26th day of January, 1898.

The Republic of Colombia is also to pay as a special allowance, as part of the costs incident to the said Commission, to Attorney Marcus Stine, representing the Cauca Company, the sum of Ten Thousand Dollars ($10,000) in gold coin of the United States of America, on the said 26th day of January, 1898.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this twenty-second day of October, in the year One thousand eight hundred and ninety-seven.

LEWIS M. HAUPT,
Chairman. [SEAL.]
C. F. SCARAMME. [SEAL.]

City and County of New York, ss:

On this twenty-second day of October, in the year One thousand, eight hundred and ninety-seven, before me personally appeared Lewis M. Haupt, of the City of Philadelphia, and Christian F. Schramme, of New York City, to me known and known to me to be the persons described in the foregoing instrument, and who severally acknowledged that they executed the same.

SAM'L. H. GUGGENHEIMER,
Notary Public,
New York County.

STATE OF NEW YORK, City and County of New York, } ss:

(1152) HAROLD R. MILLER, being duly sworn, deposes and says:

That he is the person appointed as Secretary by the unanimous action of Professor Lewis M. Haupt, C. E.; Senor Manuel H. Pena, C. E., and Mr. Christian F. Schramme, merchant, composing the commission known as the Colombia-Cauca Company Arbitration Commission, created under the convention of the fourth of January, 1897, between the Republic of Colombia and the Cauca Company, a corporation under the laws of West Virginia.

That as such secretary, and by direction of the Commission, he attended each and every of the sittings of said Commission, from the second session, on the twenty-sixth of April, 1897, to the thirty-sixth and last session, on the twenty-second of October, 1897, and personally took down, stenographically, and reduced to writing, a true and faithful account of all the proceedings of the said Commission, and all persons appearing before the same, except the testimoney of witnesses taken during August, 1897, in which he had the assistance of David J. O'Connor, a competent stenographer, who took part of said testimony under his personal supervision, and whose work he knows to have been correct. By direction of the said Commission he had the same printed, the said printing composeding three volumes, entitled "Minute Book of the Colombia Cauca-Company Arbitration, created under the Convention of 4th January, 1897, inaugurated April 3d, 1897, in New York City," and designated as Vol. I., Vol. II., Vol. III., respectively, together with all exhibits, papers, accounts, correspondence, telegrams and cablegrams, and other papers received by the said Commission during its said sessions, all of which last mentioned documents are also printed in Vol. III. of said minute book.

That the said three volumes as printed, including the said documents, and containing in all 1,052 printed pages, (1153) contain a full, complete, correct and true transcript of each and every of the proceedings of the said Commission and of all matters pertaining thereto, at each and every of its sessions, and constitute a true, correct and complete statement of everything done by or before said Commission by each and every person concerned therein.

That he attached this affidavit to the third volume of said minutes and marks for identifiation the other two volumes, which he also causes to be marked for identification by the nottary public taking this affidavit.

(Signed.) HAROLD R. MILLER.

The foregoing affidavit was this day subscribed and sworn to before me by Harold R. Miller, personally known to me to be the person described in the said affidavit, the said affidavit being attached to Volume III. of the volumes in the said affidavit mentioned, the other volumes, I. and II., being marked by the said Miller for identification in my presence, and I have marked for identification with my signature and seal all three of the said volumes.

Given under my hand and notarial seal this first day of November, A. D., 1897.

(Signed.) EMMETT R. OLCOTT,
Notary Public,
New York County.

[L. S.]

STATE OF NEW YORK, City and County of New York, } ss:

HAROLD R. MILLER, being duly sworn, deposes and says: On the 29th of October, 1897, about 3:30 P. M., I went to the Army Building in the city to see Professor Haupt to get him to sign the minutes in the printed 3d (1154) volume hereto attached. All the minutes in the 1st and 2d volumes had been previously signed by him.

I met Professor Haupt at the Army Building descending from the elevator on the ground floor at 3:30 P. M., on the 29th inst. I had with me two copies of the Commission's proceedings as printed in Vol. III, and asked him to sign the same. At the same time I informed him that I had inserted on the record a true account of what actually took place at the proceedings of the 35th and 36th Session in addition to the record handed in by Mr. Stine. Professor Haupt being in urgent hurry to leave, signed one copy without reading same and took one of them to read.

On Saturday evening, about nine o'clock, I received the following letter from Professor Haupt:

OCTOBER 30, 1897.

HAROLD R. MILLER, ESQ.,
Secretary:

DEAR SIR—You will remember that, as I was leaving the Army Building last evening to make my train for Philadelphia, you met me at the elevator and requested mo to sign two copies of the Minutes of the Colombian Commission in order that you might be able to complete your work prior to your proposed departure to Europe on Wednesday next, and that I signed one of these documents in the vestibule without reading it, retaining the other to sign on my arrival in Philadelphia. On looking over the copy which I kept, I find there has been interjected on page 911 an alleged account of what took place on the

22nd instant, which bears intrinsic evidence of having been prepared by some one who was not present at those proceedings and which is so highly colored and also so misleading as to its facts, and which is not certified to under oath, that, as the Chairman of this Commission, I must earnestly protest against the publication and distribution of any of these alleged Minutes, and request you to cancel the one signature which I have given, as well as to (1155) expunge this page from the record and to return said copy to me. If this is not done, I shall feel obliged to insist upon the publication of this letter as an inset in the Minutes in order that the purpose and intent of this Commission may not be misunderstood. A copy of this letter will also be sent to my co-Commissioner representing the Cauca Company that he may be fully advised as to the situation.

Very respectfully yours,

LEWIS M. HAUPT,
Chairman.

To this I sent the following reply:

New York, October 31st.

PROFESSOR LEWIS M. HAUPT,

Army Building, City:

DEAR SIR—I have this morning received your favor of the 30th. I may say from the start, that there has been no motive or intent on my part to obtain your signature to the Minutes under misrepresentation of any kind, and I beg you to recollect that I informed you at the Army Building on Friday that, acting under independent advice, I had entered, in addition to the draft Minutes handed me by Mr. Stine, a truthful account of what actually took place at the Meetings of the 22d inst.

I am quite aware that you did not read these Minutes before signing same, but at the same time I feel bound to say that what is entered on page 911, the same as on all the remaining pages of the Minutes, is a truthful account of the proceedings, which, as Secretary to the Commission, it is my bounden duty to reproduce without prejudice to one side or the other.

I trust that you will recognize that the extraordinary character of the final proceedings of this Commission has

placed me in an unlooked-for responsible position, and it is on that account that I have sought entirely independent advice as to my action in the matter.

(1156) In view of the large interests involved, I do not wish to act hastily, and I shall esteem it a favor if you will kindly give me an opportunity to consult my legal advisers before expunging your signature from the minutes, it being perfectly understood that the circumstances under which such signature was given will be truthfully acknowledged by me in the same way as any other incident in connection with my duties on the Commission.

The proceedings of the 35th and 36th sessions were drafted by myself on the evening of the 22d inst., and, to the best of my recollection, they are an accurate record of what took place. I have no motive or wish to color such statements in any way, my sole object being to save my responsibility to the Commission, and if any slight inaccuracy has crept in, I shall esteem it a favor if you will kindly point it out to me.

After consulting my legal advisers, I will either write or call on you personally.

Yours truly,

HAROLD R. MILLER.

The report of the proceedings of the 35th and 36th sessions, to which Professor Haupt refers in his letter, were written out by me on Sunday night, the 24th October, 1897, at my office in the Clarendon Hotel in this city. There was no one present but a lady type-writer—Miss M. A. Penman. The composition was entirely my own, without suggestion from any one whomsoever, and is a correct statement from my memory of what actually took place, and was done by me, not with any purpose or motive other than to have the minutes speak the exact truth. Not knowing whether I have the right to expunge Professor Haupt's name from these minutes, I incorporate his letter herewith, as suggested by him, for such effect in law as it is entitled to have, so that the actual facts of his signing the minutes and his subsequent withdrawal of his approval and the reasons therefor as given by him may justly appear, I solemnly swear that the foregoing statement is true, and that I have not endeavored to do more nor less than to (1157) have the minutes disclose the exact truth, feeling that I am responsible for that, but in no wise responsible

for any consequences which may rightly flow from a correct statement of the facts.

(Signed.) HAROLD R. MILLER,

Subscribed and sworn to before me this first day of November, 1897.

(Signed.) EMMET R. OLCOTT,
[L. S.] Notary Public,
New York County.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1158) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company."

Comes now the Complainant, The Republic of Colombia, by its counsel and solicitors, and moves the Court for an order enjoining the Defendants, and each of them as prayed in the Bill, pending this suit and until the final decree herein.

CALDERON CARLISLE,
WM. G. JOHNSON,
EDWIN MAXWELL.

(1159)
To John B. Floyd, Esquire, Attorney in fact for the Defendant the "Cauca Company," and Attorney in fact for the Defendant "The Colombian Construction and Improvement Company":

Dear Sir,—Please take notice that on the 10th day of January, 1898, at Clarksburg, in the State of West Virginia, we shall call up the above motion before the Honorable Nathan Goff, Circuit Judge of the United States for the District of West Virginia.

Very respectfully,

CALDERON CARLISLE,
WM. G. JOHNSON,
EDWIN MAXWELL.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants. } In Equity.

The Bill of Complaint and the Exhibits therewith having been submitted to the Court, leave is hereby given to file the same, and upon consideration thereof and of the motion for an injunction restraining and enjoining the defendants as prayed until the final decree herein and the prayer for a temporary restraining order, it is, by the Court, this fifteenth day of December, A. D. 1897, ordered:

That the process of subpœna issue as prayed against both and

each of the defendants and be served for each upon John B. Floyd, Esquire, at Charleston, West Virginia, the attorney in fact for the service of process of each of said defendants. That (1160) the hearing of the motion for an injunction be, and the same is hereby, set for the tenth day of January, A. D. 1898, at Clarksburg, West Virginia, and until the final decision upon said motion the defendants and each of them, their and each of their agents, attorneys and servants are hereby restrained and enjoined as prayed in the second prayer of said bill; provided that a copy of said Bill and of the exhibits and of the motion for an injunction, and of this order, be served with the process of subpœna upon the said John B. Floyd, attorney in fact for the said defendants.

(Signed) NATHAN GOFF,
U. S. Circuit Judge Fourth Circuit.

UNITED STATES OF AMERICA,
District of West Virginia, } ss:

The President of the United States of America to the Marshal of the District of West Virginia—Greeting:

You are commanded to summon "The Cauca Company," and "The Colombian Construction and Improvement Company," two certain Commercial Corporations created and existing under the laws of one of the United States of America, to wit: the State of West Virginia, if they be found in your District, to be and appear in the Circuit Court of the United States, for the District of West Virginia, aforesaid, at Rules to be held in the Clerk's office of said Court, at Clarksburg, on the first Monday in January next, to answer a certain Bill in Chancery, filed and exhibited in said Court against them by The Republic of Colombia, a body corporate and politic under the Law of Nations, and a foreign State within the meaning of the Constitution of the United States. Hereof you are not to fail under the penalty of the law thence ensuing. And have then and there this writ.
(1161) Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of December, A. D. 1897, and in the 122d year of the Independence of the United States of America.

[L. S.] Attest: (Signed) L. B. DELLICKER, Clerk.

MEMORANDUM.

The said defendants are required to enter their appearance in this suit in the Clerk's office of said Court on or before the first Monday of January, 1898, otherwise the said bill may be taken *Pro Confesso*.

[SEAL] (Signed) L. B. DELLICKER, Clerk.

Served the within by leaving a copy of the within Subpœna and of the Original Bill and of all of the Exhibits, and of the motion for an injunction and the order of the Court passed December 15th, 1897, upon the within named defendants, "The Cauca Company" and "The Colombian Construction and Improvement Company," by leaving the said Copies with John B. Floyd, Esquire, the Attorney in fact of said defendants, at Charleston, Kanawha county, West Virginia, on the 21st day of December, 1897.

(Signed) JOHN K. THOMPSON, U. S. M.
By D. W. CUNNINGHAM, Dept. U. S. M.

Marshal's fee, $16.00.

(1162)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants.

This cause coming on to be heard on the motion of Counsel for Complainant for an order enjoining the defendants and each of them as prayed in the bill, pending this suit, and until the final decree herein and on the motion of the defendants to continue the hearing of the same till the 7th day of March, 1898, and being argued by Calderon Carlisle and William G. Johnson, Solicitors for Complainant, and by Samuel H. Guggenheimer, Solicitor for Defendants, and being considered by the court, it is this 13th day of January, 1898, adjudged, ordered and decreed that defendant's motion for a continuance be overruled, and that the defendants and each of them, their and each of their attorneys, agents and servants, be and they are hereby enjoined and restrained pending the final determination of this cause from in any manner asserting the validity of the said alleged award in the bill mentioned, or setting up or pretending to any manner of claim or demand against the complainant, the Republic of Colombia, by reason of the same or anything therein contained, and from in any manner endeavoring to harass, annoy or discredit the complainant by the assertion of any matter of right whatsoever founded upon the said alleged award, and until the final decree herein:

Provided, however, that leave is hereby given to the defendants upon the coming in of their answer, pleas or demurrers to move the court to dissolve this injunction, and to support said motion by affidavits, and further to move to dissolve this in-

junction at any later stage of this cause as the said defendants may be advised.

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

(1163)

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants.

A motion having been made herein by the defendants that they be granted an extension of time until the first Monday of March, 1898, within which to plead, answer or demur to the bill herein, now after hearing Samuel H. Guggenheimer, of counsel for defendants in support of said motion and Messrs. Carlisle & Johnson being present and not opposing, it is ordered that the defendants have until the first Monday in March, 1898, within which to plead to, demur to, or answer the bill herein.

Dated at Clarksburg in the State of West Virginia, this 13th day of January, 1898.

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

(1164)

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants.

I appear hereby in this action as solicitor for the defendants, and each of them, having been retained by them herein, and I hereby request the Clerk of this Court to enter this, my appearance herein.

Clarksburg, W. Va., January 13, 1898.

SAM'L H. GUGGENHEIMER,
Solicitor for Defendants,
30 Broad street, N. Y. City.

(1165)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants.

PETITION OF DEFENDANTS FOR SECURITY FOR COSTS.

PETITION.

To the Honorable Nathan Goff, Judge of said Court:

The petition of the defendants, The Cauca Company and the Colombian Construction and Improvement Company.

The defendants in the aforementioned cause respectfully represent that a bill has been filed in this Honorable Court by the Republic of Colombia, a foreign State, against these defendants, corporations duly incorporated under the laws of the State of West Virginia, and is now pending in this Honorable (1166) Court. They respectfully represent to your Honor that the said Complainant should be required to furnish security for the costs to be incurred in the said litigation in this Honorable Court, and they ask that an order may be passed requiring the said Complainant to give security for said costs on or before a certain date to be therein named.

And as in duty, &c.

THE CAUCA COMPANY & THE COLOMBIAN CON. & IMP. CO.,
(Signed) By COWEN, CROSS & BOND,
Solrs.

Feb. 15, 1898.

ORDER.

Upon the foregoing petition it is this 15th day of February, in the year 1898, ordered by the Court that the Republic of Colombia, the complainant in the aforementioned cause, give security for the costs in said cause, on or before the 21st day of March, 1898, which surety shall be approved by the Clerk of this Court; provided a copy of this order be served on Counsel for the said Complainant on or before the 19th day of February, 1898 (or show cause why the same should not be done).

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

(1167)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company *et al.*, Defendants. } In Chancery.

The undersigned hereby consents that Cowen, Cross and Bond of Baltimore, be substituted in the place of the undersigned as solicitors for the defendants in this cause, and that the foregoing order be forthwith entered.

Dated February 7th, 1898.

MARCUS STINE,
SAML. H. GUGGENHEIMER,
Defts., Solicitors.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainants,
vs.
The Cauca Company *et al.*, Defendants. } In Chancery.

On reading and filing the annexed consent of Marcus Stine and Samuel H. Guggenheimer, and on motion of E. J. D. Cross, for Deft.—

Ordered, That Cowen, Cross and Bond be substituted as the solicitors for the defendants in the above-entitled action in the place of Marcus Stine, Esq.

Dated February 15th, 1898.

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

(1168)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants. } In Equity.

Know all Men by These Presents:

That the complainant, the Republic of Colombia, as principal, and the American Bonding and Trust Company, of Baltimore City, as surety, are held and firmly bound unto the defendants, The Cauca Company and the Colombian Construction and Im-

provement Company, in the full sum of three thousand dollars ($3,000), for which sum, well and truly to be paid to the said defendants, they bind themselves and their successors firmly by these presents, signed and sealed this twenty-first day of February, A. D. 1898.

Whereas the above bounden complainant has instituted a cause in equity in the United States Circuit Court for the District of West Virginia against the above named defendants, now the condition of the above obligation is such that if the said complainant shall pay all costs, which by the decree of the said court shall be adjudged against it, then the obligation to be null and void, otherwise to be and remain in full force and virtue in law.

Legacion De Colombia En Los Estados Unidos De America.

THE REPUBLIC OF COLOMBIA,
By JULIO RENGIFO,
Charge d'Affaires ad interim of the
Republic of Colombia.

The American Bonding & Trust Co., Incorporated 1894, of Baltimore City.

THE AMERICAN BONDING AND TRUST COMPANY,
of Baltimore City.
By JAS. BOND, President.
SAMUEL S. SHRIVER, Secretary.

(Endorsement of Counsel:)

This bond is satisfactory.
(Signed) COWEN, CROSS & BOND,
Counsel for Defendants.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.
IN EQUITY.

THE REPUBLIC OF COLOMBIA, COMPLAINANT,
vs.
THE "CAUCA COMPANY" AND "THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY, DEFENDANTS.

ANSWER OF THE DEFENDANTS.

Filed March 7th, 1898.

COWEN, CROSS AND BOND,
Solicitors for Defendants.

JOHN W. BEAUMONT,
EDWARD H. MURPHY,
of Counsel.

(1170)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The "Cauca Company" and "The Colombian Construction and Improvement Company," Defendants.

ANSWER OF THE DEFENDANTS.

The "Cauca Company" and "The Colombian Construction and Improvement Company," the defendants in the aforegoing cause, now, and at all times hereafter, saving and reserving all and all manner of benefit of advantage of exception, or otherwise, that can or may be had or done, to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, jointly and severally answering, say:

(1171) First. They admit that the complainant, the Republic of Colombia, is a body politic and a sovereign and foreign State at peace with the United States, and having diplomatic relations therewith; and also that these defendants are corporations created and existing under the laws of the State of West Virginia; and also that the said Don Julio Rengifo was at the time, when said bill of complaint was filed, Chargé d'Affaires of the complainant representing said Republic at Washington; and that these defendants have an office and place of business in the city of New York, in the State of New York; and that as permitted and required by their articles of incorporation they have not now, and never have had, any office in the State of West Virginia, but that the said John B. Floyd mentioned was their true and lawful attorney appointed under the powers of attorney executed by these defendants, certified copies of which are filed by the complainant with its bill of complaint and marked Complainant's Exhibits, Nos. 2 and 3.

First. In answer to the allegation in the first paragraph of said bill of complaint contained, they say that it is true that on or about the said 27th day of August, 1890, the Republic of Colombia was the owner of a certain railroad running eastwardly from Buenaventura towards the city of Manizales; that the length of the said road was about the length mentioned in the said paragraph, to wit: twenty-nine kilometers and seven hundred and fifty meters, which was nearly completed; that about two kilometers and six hundred and fifty meters were partially com-

pleted, and that a portion of the said road was being operated by or under the direction of the complainant (the circumstances of the construction of the same being more fully and particularly mentioned in a subsequent portion of this answer); but they deny that the said railroad was in a condition for proper operation, but, (1172) on the contrary, they allege that the said road-bed and rails were in a dilapidated condition, and before the same could be suitably operated that the then existing railway required repairs and reconstruction which amounted to, in effect, an entire rebuilding of the same.

Second. These defendants say that it is true, as alleged in the second paragraph of said bill of complaint, that on or about the said 27th day of August, 1890, a certain James L. Cherry, a citizen of the United States, did enter into a written contract with the said Republic of Colombia, through its authorized agents and officers, a translation of the text of said contract is given as Exhibit No. 4 filed with the bill; (and these defendants say that the said James L. Cherry was an accomplished engineer and had had large experience in the construction of railroads, and had been in business some time in the city of San Francisco; and that on or about said date the said James L. Cherry visited the said Republic of Colombia, and after careful preliminary examinations and explorations and negotiations with the officials of the said complainant, he did execute said contract for the construction of a railway in the said Republic of Colombia, which said railway was to commence at the port of Buenaventura and to run to the city of Manizales via the town of Cali). These defendants neither admit nor deny the allegation in the said second paragraph, to wit: That the National Constitution of the Republic of Colombia provides for the approval or disapproval by its Congress of such contracts, nevertheless say that the said contract was fully ratified and approved by the due and proper officials of the said complainant, and became and was an existing contract between the said complainant and the said James L. Cherry.

Third. These defendants admit that under and by virtue of the grant, or, as expressed, the "concession" from the said (1173) Republic of Colombia, the said Cherry contracted to build the uncompleted portion of the said railway and to construct and operate the line of railway from said city of Buenaventura unto the city of Manizales, which was to be commenced within four months of the date of the said contract, and to be completed to the city of Cali within a period of four years, but said construction and completion was to be subject to interruptions from fortuitous circumstances, and delays occasioned by the government, and unavoidable by the contractor or his assignees (as provided in the concession, Exhibit 4, Articles 4, 5, 10, etc.). The limitation of time was not absolute, but was subject to conditions,

as appear from the terms of the concession. That many delays and hindrances occurred in the progress of the said work entirely without the fault of the said Cherry or his assignees, which prevented the completion of the said work in the form and manner as hereinafter more fully specified, which said hindrances were well known unto the said complainant and its officials, and were acknowledged by the same as grounds upon which the time for the completion of said work should be extended, under the contract.

Fourth. These defendants admit the allegations contained in the fourth paragraph of the said bill of complaint, to wit: That in consideration of the faithful performance of the said contract by the said Cherry or his assignees, the said Republic of Colombia granted unto him and them the exclusive privilege of constructing and operating the said railroad, and also the exclusive privilege of constructing and operating other important lateral and connecting railroads, and in addition thereto, the said concession included large and liberal grants of mines upon the route of the said road, to wit: Valuable coal mines and minerals as mentioned in the 22nd article of said concession (Exhibit No. 4); and also the right to construct ports, wharves, and landing places; to (1174) establish telegraph and telephone lines as mentioned in Article 30 of said concesssion, together with certain valuable land grants along the route of said railways and branches.

Fifth. These defendants state that within said period of four months the said Cherry consulted with a number of wealthy and influential capitalists in the city of New York, in the State of New York, and in the State of New Jersey, and also in the city of Chicago, in the State of Illinois, and agreed with said parties that a corporation or corporations necessary for the completion of the said work should be formed, and that the said Cherry would, under the terms of the said concession (Exhibit No. 4), assign the same unto them as under the terms of Article 34 of said concession the said Cherry had the right to do; and that for the purpose of completing the said contract in good faith this defendant, the "Cauca Company," was incorporated on or about the said 29th day of November, 1890, as will appear by a certified copy of the charter of this defendant filed with the bill of complaint and marked Complainant's Exhibit No. 5.

Sixth. In answer to the allegations in the sixth paragraph of the bill of complaint contained, these defendants say that it is true that on or about the said 29th day of November, 1890, this defendant, "The Colombian Construction and Improvement Company," was incorporated under the laws of the State of West Virginia for the purpose of aiding in the construction of the said railway and for other purposes, and that a copy of said charter

is filed with the bill of complaint and marked Complainant's Exhibit No. 6.

Seventh. These defendants admit that on or about the said 29th day of November, 1890, the said James L. Cherry entered (1175) into a contract with this defendant, the "Cauca Company," and also with this defendant, "The Colombian Construction and Improvement Company," copies of which contracts are filed as Complainant's Exhibits Nos. 7 and 8.

Eighth. In answer to the allegations in the said eighth paragraph of the bill of complaint contained these defendants deny the allegation therein contained, to wit: That the incorporation of these defendants were "part and parcel of a scheme to cheat and defraud the complainant and to escape the just obligations of the contract between the complainant and the said Cherry, and to evade the faithful performance thereof, and at the same time to secure to the said Cherry and his associates the beneficial provisions of said contract between the complainant and the said Cherry"; but, on the contrary, they say that the incorporation of these defendants was a proper method of acquiring the amount of capital necessary to make the very extensive public works, to wit: The railroads in the said concession (Exhibit No. 4) described; and that the stockholders and directors of the said defendants were numerous, responsible and wealthy persons; and that these defendants were incorporated in good faith for the purpose of carrying out the provisions of the said contract or concession, all of which facts were well known unto the complainant and its public officials, and these defendants were recognized and accepted as assignees of the said James L. Cherry, and acknowledged and received in his room, place and stead as his legal successors, and obligated to perform the terms of the said contract or concession and entitled unto the benefits thereof; and that had not the complainant, without just cause, and illegally violating the said concession, and by confiscating the property of these defendants, and by its own action prevented them from completing the same, these defendants aver and (1176) charge that they would have been able to complete the public works mentioned in the said concession.

Ninth. These defendants, in answer to the allegations in the ninth paragraph of said bill of complaint contained, for answer thereto, say that they did, immediately after the assignment unto them of the said Cherry concession, commence in good faith and within said four months, from the said 27th day of August, 1890, to construct the said railroad and to repair the existing roads, and to make preliminary and other surveys for the portions of said line to be done; and they ordered early in the year 1891 large amounts of supplies suitable for such purpose, to wit: A locomo-

tive from the Baldwin works upon May 18th, 1891, and a large amount of rails and material for construction which were sent out from New York, and from England, unto Buenaventura; and used all due diligence in the construction of the railroad from said period of commencement of the said work until the date when they were arrested in the execution of the said contract and prevented from further compliance with the same by the unlawful act of the complainant in seizing the property of these defendants. The difficulties arising from the climate of the said Republic of Colombia were almost insuperable, the location of the said railway being a short distance north of the Equator, and many of the bridges erected by these defendants were washed away by the floods incident to such climate, and the popular sentiment in said country having become intensely antagonistic unto these defendants, all united in interposing insuperable obstacles to the early completion of said contract within the time required; and recognizing the difficulties which these defendants had encountered from the causes above mentioned, the said complainant prior to the expiration of the four years within which said work was to be completed, to wit, four years from the 27th (1177) day of August, 1890 (which would be until the 27th day of August, 1894), through its Minister of Public Works, duly authorized for said purpose by said complainant, on or about the 10th day of December, 1892, extended said period of completion until the 18th day of October, 1896. Such extension was executed for and on behalf of the complainant by José Manuel Goenaga, Minister of Public Works, duly authorized by the Vice-President of the Republic, Signor M. A. Caro, the then acting executive of the complainant, also authorized this defendant, the "Cauca Company," to introduce into said Republic Chinese labor to the amount of 3,000 persons, which said extension was accepted in good faith by these defendants, and was ratified and authorized by the government of the complainant at the city of Bogota of the 11th day of December, 1892 (a copy of the instrument of said extension having been filed by the counsel for the complainant, to wit: Francisco J. Cisneros, and appearing in the brief and papers submitted by him for and on behalf of the Government before the Arbitration Commission hereinafter referred to).

Prior to the expiration of said extended time, to wit: On or about the 16th day of November, 1894, the Congress of the complainant decreed the forfeiture of the concession granted unto the said Cherry and assigned unto these defendants, which will appear by reference to the exhibit of the complainant No. 10 filed with its bill of complaint; which said forfeiture was entirely illegal and deprived these defendants of the opportunity to go on and complete the said works.

These defendants deny the allegations in the said 9th para-

graph of said bill of complaint contained, to wit, that the work which had been done was imperfectly done, and not in strict compliance with the requirements of the contract or concession, and allege that the same was substantially completed in full accord with said contract and with the assent of the agents of the com-
(1178) plainant; and that said allegations so made are made in the attempt to justify the unlawful conduct of the said complainant; and that the matters and things stated in the affidavit of the said Francisco J. Cisneros, filed with the bill of complaint and marked Exhibit No. 9, have no relevancy in said matter. The statement that the railway was not of the proper width mentioned in the contract is an immaterial and trivial matter; inasmuch as the width required by the twelfth clause of the said concession (Exhibit No. 4) was "one meter in width between rails," which is thirty-nine and thirty-seven hundredths (39.37) inches, whereas the width of the road already constructed by the said Cisneros was thirty-six (36) inches, the standard narrow-gauge width; and the said road was continued at said width to obviate the necessity of changing the rolling stock and equipment thereon, and the maintenance of said original width was patent to the complainant and to all its agents during the years during which the same was being constructed, and was not objected to by them, or any of them. Said allegation in said affidavit of Cisneros is an afterthought and an attempt by a trivial technicality to justify the complainant in its dealings with these defendants. In reference to the concluding allegation of the said ninth paragraph of the bill of complaint that "and your orator is informed and believes and therefore charges that no part of said work was done by the defendant, the 'Cauca Company,'" these defendants say that the entire work was done for and on behalf of the said "Cauca Company," which became responsible for the same by reason of the issue of its bonds and stock for that purpose. The formation of this defendant, "The Colombian Construction and Improvement Company," was fully known unto the said complainant, and it was also known that the work was done by it for and on account of the "Cauca Company"; that the ownership of the stock in the said companies was practically the same, and that all the negotiations subsequent
(1179) between the Government and these defendants were carried on in the name of the "Cauca Company," and the commission was established to pass upon the rights and the claims of the said "Cauca Company," which held title to the property and represented all the parties in interest; and that the said allegation in the said ninth paragraph of the bill of complaint aforesaid is a minute technicality without any substantial basis in fact.

Tenth. In answer to the allegation in the tenth paragraph of

the bill of complaint contained, these defendants say that the failure to complete the road within the period of four years and in the specified manner were alleged to be causes of forfeiture by the Republic of Colombia, but these defendants say that there were no causes under said contract for the forfeiture of the same. It was specifically provided by the 39th article in said concession that the failure to complete the same within four years should be a cause for the forfeiture of the said contract, but there was an exception " in case of fortuitous circumstances or *vis major*," which fortuitous circumstances and *vis major* intervened and were well known unto the complainant; and also that by the sixth article plans, profiles and maps of the line were to be made and forwarded to the Government, and certain sums of money were to be deposited with the agent of the Government, to wit, the sum of Fifty Thousand Dollars ($50,000) of American gold, which said sum of money was duly deposited, and these defendants strictly complied with all the requirements in said clauses contained, and also those contained in the 34th and 35th articles.

The illegality of the action of the said complainant in so forfeiting said contract was expressly admitted by the counsel for the Government upon page ten (10) of the Complainant's Exhibit, No. 19 (Proceedings of the Arbitration), and the said counsel of the Government, to wit, Francisco J. Cisneros, stated (1180) that the confiscation of the property of these defendants "was the only wrong action of the Government."

Eleventh. In answer to the allegations in the eleventh paragraph of the bill of complaint contained, these defendants deny that any forfeiture of said contract had duly occurred as alleged therein, but, on the contrary, these defendants aver that owing to the delays, hindrances, neglects and failures of the complainant and its officers to comply with the provisions of the said concession, and on account of the physical obstacles, and the fortuitous circumstances which intervened, delaying the progress of the work, that the said contract or concession was in full force and effect when the Congress of the Republic of Colombia enacted the law entitled "Law 60, 16th November, 1894," whereby the said complainant through its Congress attempted to forfeit the said concession and to divest these defendants of their property rights in the same, and in the railway and appurtenances which they had constructed thereunder; and said decree or so-called law stated that Congress did not approve of the extension of the time for the construction of the said railroad, using the expression as follows:

" Inasmuch as Congress does not approve of the contract 98 of 1892, carried out between the Minister of Public Works and Mr. Victor Mallarino, general representative of the Cauca Rail-

road Company, which deals with the extension of time for the construction of the said railroad."

These defendants aver and charge that the action of the said complainant was in derogation of the said concession or contract originally made with the said Cherry, hereinbefore referred to, and that the same was an act of confiscation of the property of these defendants and in violation of the Constitution of the said Republic of Colombia, to wit, the 34th article thereof, which states: "The punishment of confiscation shall not be imposed"; (1181) and also in violation of the 32d article of said Constitution, which is: "In time of peace no person shall be deprived of his property, wholly or in part, except as a punishment, or judicial compulsion, or indemnity, or general contribution, in accordance with law"; and these defendants state that they are advised that the Constitution of the said Republic of Colombia, in the 33d article, renders it, the said complainant, responsible for all illegal or improper acts in case the same shall have taken place, the clause of the said 33d article being: "The nation shall always be responsible for the expropriations made by the government or its agents."

And these defendants deny that the said extension of time so granted unto them by the executive of the Government was an invalid extension, but, on the contrary, these defendants aver that the same was a valid extension, and that the same was authorized and assented to by the executive of the complainant in recognition of the fact that by reason of the fortuitous circumstances and *vis major*, and the defaults of the complainant itself, no ground of forfeiture could exist.

Twelfth. In answer to the allegations in the twelfth paragraph of the bill of complaint contained, these defendants say that it is true that no proceedings in pursuance of said forfeiture were taken and that no application was made to refer the question of the right of forfeiture to arbitration as provided in Article 7 of said contract, inasmuch as the said concession was improperly forfeited under the terms thereof. As soon as the act of forfeiture was passed the United States Minister to the Republic of Colombia, Hon. L. F. McKinney, at the instance and request of the then Secretary of State, the late Hon. Walter Q. Gresham, intervened to protect the rights of these defendants as American citizens; such intervention was made through these diplomatic (1182) channels throughout the year 1895. Later when the said complainant, through its officers, insisted on the cancellation of the said contract, the Hon. Richard Olney, then Secretary of State, cabled the American Minister to give the defendants and their property the full protection of the United States Government from the improper action of the complainant in the premises. And these defendants are advised and therefore state

that the allegation in the said twelfth paragraph of said bill of complaint, to wit: " This complainant, yielding to the solicitations of the said Cherry as the agent and attorney of the defendant, the 'Cauca Company,' and in deference to the friendly intervention in its behalf of the Minister of the United States at Bogota, but not in pursuance of any negotiations with the United States of America, and without entering into any compact, agreement or stipulation with the said United States or their representative, voluntarily decided not to avail itself of its right under the contract to assume, without any compensation, the ownership of the work that had been done," is not in accordance with the facts. These defendants aver and state that the action of the complainant in proceeding to complete the spoliation of these defendants was arrested by the American Minister, acting under instructions from the State Department at Washington, who intervened for the purpose of protecting the property of these defendants as American citizens from the action of the complainant. All of which is shown by the testimony of the said L. F. McKinney, the then Minister at Bogota, which appears in the Exhibit No. 19, filed by the complainant with its bill of complaint, at the 259th and subsequent pages thereof. These defendants further aver and state that the act of the Congress of the complainant, which is entitled the " Law forty-one of 1896 " (the Spanish text whereof, and the translation whereof are given with the bill of complaint as Complainants' Exhibit No. 11), was passed by the Congress of the complainant only (1183) in consequence of the prompt and peremptory action of the American Minister, acting under instructions from the State Department, at Washington.

Under said law, the commission which made the award was constituted, which said act, law or decree was designed by the diplomatic authorities of the United States and the Congress of the complainant to protect the property of these defendants, and to give unto them full and adequate compensation for their great losses sustained by the action of the complainant. By the terms of the first article thereof it was provided: " The Executive is hereby fully empowered to equitably compromise with the grantee of the railroad from Buenaventura to Manizales, or his lawful representatives, the questions or differences that may arise in consequence of the declaration of lapse of franchise referred to in the Resolution No. 9, of October 16th, 1895, or by reason of the stipulations of the contract of August 27, 1890, approved by Law 16 of the same year." So that under and by virtue of the solemn act of the complainant, brought about by the intervention of the United States, there was promised to these defendants full compensation for their property losses and equitable treatment in the ascertainment of the same through the means provided, to wit: The constitution of a tribunal for

the purpose of ascertaining the extent of said losses of these defendants in a equitable manner. Under and by virtue of the authority of said law, and through the offices of the American Minister at Bogota, these defendants reached the adjustment by which a portion of the undisputed compensation due and owing unto them should be paid and the ascertainment of further compensation should be inquired into, adjudicated, and, when ascertained, should be paid unto them.

The letter of the Executive of the complainant, Senor M. A. Caro, upon said subject is found in the exhibit of the complainant No. 21, at page 972 et seq. The basis of settlement was agreed (1184) upon between the said American Minister and the said Executive whereby it was provided that the resolution of forfeiture should be suspended and the arbitration tribunal should be constituted for the purpose of giving these defendants *full and adequate* compensation for their losses so incurred. The agreement of January 4th, 1897, provided for the arbitration of the claims of these defendants against the complainant, and constitutes the document filed by the complainant with its bill of complaint, to wit, its Exhibit No. 11. The agreement, provided for the submission to arbitration of the differences between the defendants and the complainant, and also provided in the 4th Article thereof for a special commission, to be composed of three members, who were to determine the indemnity to be paid to the defendants. By the 10th article of said agreement the complainant paid unto the said Cherry, the attorney in fact and agent of the defendants, the sum of Two Hundred Thousand Dollars ($200,000) in gold, which was specifically stated to be on account of such amount of indemnity as the commission might fix, and the said complainant covenanted and agreed that in the event that the said commission should award unto these defendants any greater amount than the sum of $200,000, that the complainant was "to pay the excess at such time and in such manner and on such terms as may be determined by the commission."

These defendants deny the other allegations in said twelfth paragraph of the bill of complaint contained.

Thirteenth. In answer to the allegations in the thirteenth paragraph of the bill of complaint contained, these defendants say that the statements therein are not correct, and they deny that the said constitution of the said Commission was a "private agreement," but they aver, on the contrary, that the same was an act of the complainant in its governmental capacity done by it (1185) at the instance and request of the United States Government through its official representatives, to wit: The Secretaries of State Gresham and Olney, and through the Minister of the United States at Bogota. The wisdom and prudence of the

same are not matters to be considered by the complainant in its bill of complaint, and it is not to be considered that the constitution of said commission was an act of grace by the complainant, but the same was an act of public justice done by the said complainant as a government, at the instance of the Government of the United States. The selection of a representative of the complainant and the selection of a representative by these defendants was a part only of the institution of said commission as the selection of the third member or umpire was provided to be made by agreement between the Secretary of State of the United States of America and the Minister of Colombia at Washington, so that by reason of the constitution of the said commission as in the manner aforesaid, the same partook of a public and international character and differed from an ordinary reference to arbitration of a trade dispute of merchants.

Fourteenth. These defendants, in answer to the allegations in the fourteenth paragraph of the bill of complaint contained, state that it is true that Article 6th of said act for the constitution of the tribunal of adjustment of the differences between the complainant and these defendants did provide that in case any of the members of said commission should decline to act or should resign from the commission or cease to act, that the proceedings should not be invalidated thereby; and the said 6th article did also provide for the appointment of a member of said board in place of the one who should so decline to act or resign, within a specified time, which said appointment should be made by the party represented by such member; and in the event of such non-appointment the Secretary of State of the United States and the Minister (1186) of Colombia at Washington should proceed by agreement to appoint a person to fill the vacancy. The relevancy and effect of this provision in said article will be considered in a later paragraph of this answer.

Fifteenth. In answer to the allegations in the 15th paragraph of the said bill of complaint contained, these defendants state that it is true that the members of said commission were duly appointed as evidenced by the certificates filed with the bill of complaint and marked Complainant's Exhibits Nos. 13, 14 and 15; and that said appointments of the members of said commission representing the parties hereto, to wit, the complainant and these defendants, were made at Bogota shortly after the execution of the articles providing for the appointment of such commission. The said articles were executed on the 4th day of January, 1897, and the representative of the complainant was appointed on the 11th day of January, 1897; said representative was Senor Manuel H. Pena; the said Pena was appointed by the complainant as its representative for the reason of his entire familiarity with the railroad and property, having acted as an

arbitrator between the complainant and Francisco J. Cisneros, who was the attorney in fact and counsel of the complainant before the said commission. (The fact being that the said Cisneros had a concession somewhat similar to that vested in the defendants for the purpose of the construction of a road in 1885, which concession was surrendered on account of a revolution in the governmental conditions of the complainant.) Said Cisneros had received under the arbitration of the said Pena and a certain Mr. Conwell the amount of $1,780,000 for the portion of the road constructed, and a portion of the concession vested in these defendants consisted of the work so constructed by said Cisneros, and for which he had been so compensated to the amount afore-
(1187) said; which matters appear in the evidence of the said Cisneros taken before said Board in Exhibit No. 20 filed by the complainant with its bill of complaint, at page 598, et seq. For these reasons the said Pena was chosen by the said complainant as its representative on said commission. The said Christian F. Schramme was appointed by this defendant, the "Cauca Company," as its representative on account of his having been entirely familiar with all the transactions growing out of the construction of the said road, having been connected with these defendants since their origin. The interest of the said Schramme in the affairs of the defendants was well known at the time he was selected. He was selected because he was familiar with the business affairs of these defendants, and the complainant and its representatives had full knowledge of his said interests and such associations, and assented unto his appointment with full knowledge of such interest. The third member of said commission, Lewis M. Haupt, was appointed by the joint action of Hon. John Sherman, Secretary of State of the United States, and Senor Julio Rengifo, the Chargé d'Affaires of the Republic of Colombia at Washington. He was selected by these distinguished persons on account of his great knowledge of engineering matters and the construction of railroads, and on account of his high character and standing as an engineer and as a gentleman—he having been professor at one time in West Point Military Academy and subsequently extensively engaged in engineering matters. Such was the reputation and character of the said Lewis M. Haupt that while he was serving on said arbitration commission, the present Executive of the United States appointed him as a member of the board to investigate into the proposed construction of the Nicaragua canal, in which important and honorable occupation he is at present engaged.

These defendants state that the said arbitration commission commenced to perform its duties on or about the 3d day of April,
(1188) 1897, and that it was inaugurated on said date and then adjourned until the 26th day of April, 1897. That by the terms of its constitution, to wit, the 8th article thereof, it was allowed

for the purpose of transacting its business to sit for a period of 150 days, commencing from its installation, which might be extended for sixty days more in the event that justifiable causes of delay arose; that said commission did consider that the time should be extended and the same was extended by the act of the commission. When it had reached its 35th session on said 22d day of October, it had consumed under the terms of its constitution a period of 202 days, leaving as a limit for the time for its existence the period of 8 days. These defendants are advised, and so state, that before the said 35th session all the work of the said commission had been performed. It had formulated its finding and had agreed upon the result thereof, as hereinafter stated. All the evidence had been adduced before the said commission by these defendants and by the complainant. Full arguments had been made by counsel for these defendants and for the complainant, and full and elaborate briefs had been filed on behalf of each party. The said briefs were exchanged on or about the 21st day of September, 1897, as appears from the entry on page 792 of the record, to wit: Complainant's Exhibit No. 20; and these defendants here file copies of the said brief, on behalf of themselves, and also a copy of the brief of the Republic of Colombia, which are marked Defendants' Exhibits Briefs Nos. 1 and 2. The brief of the complainant contained certain records before the said commission which do not appear in the other records; and these defendants are advised and so state that the said briefs were made part of the said records and should have been filed by the complainant when it filed the records of said commission.

At an early period in the sessions of the said commission it was determined by the unanimous action of the commission that its (1189) decisions should be by a majority vote, and the said Pena and the said Cisneros, as the commissioner and as the counsel and attorney in fact of the complainant, acquiesced in said resolution, which thereby became the act of the said Pena. By such action it was agreed by the complainant for and on its behalf that the vote of the majority of said commission should be binding on the same, and should be the act of the said commission.

By the 5th article of the submission, the commission had judicial powers. Being composed of three members, it was necessary to prescribe how it should act, whether by majority or unanimously. It had the power to determine. "It shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves" (5 article of Exhibit 12, p. 54, Bill of Complaint). The decision of the commission upon such question is to be found on page 11 of the record of the said commission, to wit, Complainant's Exhibit No. 19.

These defendants do not know whether said action of said

Pena in so resigning after the said commission had reached a definite result was done by the order or "with the knowledge of the complainant," but these defendants are advised, and so charge, that the said resignation took place with the knowledge and assent of the diplomatic representative of the complainant at Washington, to wit, the said Senor Julio Rengifo, Chargé d'Affaires, and was assented to by him, with the intent, if possible, to make null and void the action of his government and of the United States Government, and the concurrence of the parties hereto for the purpose of a definite ascertainment of the rights of these defendants. These defendants ask for a full discovery of the knowledge of the said agent of the complainant upon these subjects; and for the production of the telegrams and letters which passed between them upon such proposed resignation.

(1190) These defendants are advised, and so state, that the resignation of the said Pena was not proper under the circumstances.

Neither at the time of the attempted resignation of said Pena, did he or any person on behalf of complainant request or tender the appointment of a commissioner in his place. Nor has the complainant in its bill of complaint averred that it was willing to fill such vacancy and complete the arbitration. That such action was designed by him to destroy the reference to arbitration, and to leave these defendants without remedy, inasmuch as it was not possible within the time allotted for the existence of the commission to fill the vacancy made by Pena; and that his said resignation was not made in good faith and under the circumstances was null and void.

Sixteenth. In answer to the allegations in the 16th paragraph of the bill of complaint contained, these defendants state that it was not possible for them to have made the request to have another member of the commission appointed within the time limited for the continuance of the commission. Before such action could have taken place the time would have elapsed for the existence of the commission, to wit, the 30th day of October, when the time limit would have been reached; but that the said Pena had participated in all the proceedings, and was aware of the finding of the commission, and his resignation was for the purpose of destroying the commission and leaving these defendants remediless in the premises.

Seventeenth. In answer to the allegations in the 17th paragraph of said bill of complaint contained, these defendants say that it appears from the record filed by the complainant that the testimony was closed at the 29th session, which was held on the 10th day of September, 1897, and that the commission then (1191) adjourned until the further order of the Chair for the

purpose of considering the matters brought before it, and for the purpose of considering the briefs of counsel which were to be filed on the 21st of September. The commission reconvened regularly on the call of its chairman for its 30th session on the 12th day of October, 1897, at which session all the questions were discussed in regard to the scope of the convention and the indemnity to be given to these defendants by such commission; and the chairman, Lewis M. Haupt, submitted a preliminary report drafted by him. Said meeting then adjourned until the 14th day of October, when it held its 31st session, all the members being present. It met for its 32d session on the 15th day of October, and the said Pena, on behalf of the complainant, filed a written opinion as to his findings in the premises, and the finding of the said Pena was overruled by a majority of the commission. At said meeting the commission by a vote adopted the finding of the said Lewis M. Haupt as its finding. All of which will appear by the proceedings of the commission thereon from pages 795 to 871 of the record, Complainant's Exhibit No. 20. On the question of the adoption of the chairman's finding the said Pena voted in the negative, but the affirmative action of the other commissioners then and there became the action of the said commission, including that of the said Pena. So that the said commission, on the said 15th day of October, 1897, when the said Pena was present, had completed to all intents and purposes its finding. At the thirty-third and thirty-fourth sessions of the said commission, on the 18th and 19th days of October, 1897 (the minutes of which are given on pages 872 to 906 of the said record, Exhibit No. 20), when the said Pena was present, all the details of the said finding were passed upon and agreed unto by a majority of the commissioners. At the 35th session of said commission, on the 22d day of October, after the work of the said commission had been completed and all (1192) the details of the award had been determined, ascertained and voted upon, the said Manuel H. Pena handed unto the commission what purported to be his resignation, all which appears on the 907 page of the record, Exhibit No. 20. Defendants therefore aver and charge that said resignation so made under the said circumstances was agreed upon and designed by the said Pena and by the said Francisco J. Cisneros, attorney in fact of complainant, to abrogate all the actions of the said commission.

The commission then determined to proceed in the absence of the said Pena, and did so proceed. These defendants deny that the commission acted wholly under the advice of Marcus Stine, who was counsel for these defendants at said time, and deny that the said commission considered or decided matters not acted upon by the full commission before that time. These defendants are advised, and so state, that the action of the said commission was

legal and proper, and that in finally formulating the award reached by the commission before the pretended retirement of the said Pena, it acted legally, and properly and took the only action that it was proper, just and legal for it to take. The printed copy of said award is filed with the complainant's bill of complaint as Exhibit No. 16, to which reference is made.

Eighteenth. These defendants, for answer to the allegations in the 18th paragraph of the said bill of complaint contained, say that they deny the allegations therein contained; and these defendants are advised that it was not necessary or proper in the then status of the arbitration that another arbitrator should have been appointed, and they deny that the said award so found whilst the said Pena was a member of said board is *ultra vires* and void, but, on the contrary, they are advised as matter of law that the said finding is genuine, and valid, and binding upon the complainant in this proceeding. These defendants are advised (1193) and aver that the resignation of said Pena was entirely without effect to invalidate the proceedings of the commission, or to affect the power of a majority of the same to conclude and perfect the findings and award of such commission.

Nineteenth. In answer to the allegations in the 19th paragraph of the bill of complaint contained, these defendants deny that the said Christian F. Schramme and the said Lewis M. Haupt failed in their duty of fairness and impartiality, or misconducted themselves at the last two meetings so held by them as charged, by taking in and admitting as a party to their deliberations the said Marcus Stine, and under and by his directions causing to be destroyed the minutes of their proceedings. They state that said parties did not destroy the minutes of any proceedings. But being surprised at the irregular and unexpected action of said Pena that they at first considered that they would report unto the Secretary of State of the United States the fact of his resignation. They commenced to draw up a statement of the same to be forwarded to the Secretary of State, but after reflection they considered that the same was not necessary, whereupon they destroyed the same. They did not interfere in the slightest way with the minutes of the said meetings, nor did they suppress any thereof, nor did they fabricate or manufacture any of the same. The said charges so recklessly made by the complainant in its bill of complaint are absolutely without any foundation in fact. Neither did the said Stine fabricate any of the said minutes. The fact was, that when the said Haupt and the said Schramme were informed of the withdrawal of the said Pena and also of the said Cisneros, as detailed on the said 22d day of October, 1897, said Stine stated that in his opinion it was not proper or necessary to address any communication to the Secretary of State of the United States for the reason that said

official had no interest in said arbitration, than by his co-action (1194) with the Colombian Chargé d'Affaires in designating the third arbitrator. The proposed communication to the said Secretary of State, which had been dictated partially by the said Haupt, and which was ordered to be cancelled by him, for the reason aforesaid was not a part of the minutes. In place of consulting with the said Marcus Stine, who had been counsel for the defendants, the said Lewis M. Haupt and Christian F. Schramme sought the advice of Mr. Louis Marshall, a member of the bar of New York in good standing and repute, and it was under his advice that they acted.

Twentieth. These defendants in answer to the allegations in the 20th paragraph of the said bill of complaint contained, say that they deny the allegations therein contained, to wit, "that the said Haupt in violation of his duty, impartially and fairly to consider and decide, as required by the agreement creating the said commission, the matters in controversy submitted to it by the parties thereto, before the various matters in behalf of the parties in interest had been completely presented, and without considering or examining the views presented for his examination and consideration by this complainant, but wholly disregarding the same, did, on the 12th day of October, 1897, promulgate a certain projected scheme of decision or award," as the same is characterized in said paragraph. But, on the contrary, these defendants aver, and the record for the said 12th day of October shows and demonstrates, that the said Haupt, in compliance with his duty as chairman of the said commission, did formulate and put in shape the finding for the said commission which he submitted unto the commission for its final action. It was well-known to said commission, and unto the said Pena, and unto the representatives of the complainant that the same was the award of the commission. These defendants deny that the said Haupt (1195) subsequently attempted to suppress from the minutes of such proceedings any part of the proposed decision or award. They also deny that the said Haupt directed the Secretary of the said commission to expunge from the records of the commission any part of the said proposed award with the object of misrepresenting the true course of procedure as charged in the 20th paragraph; and they aver that the said allegations are utterly baseless and have no foundation in fact.

Twenty-first. In answer to the allegations in the 21st paragraph of the bill of complaint contained, these defendants deny that there was any misconduct on the part of the said Haupt as an arbitrator, and they deny that the said Haupt was a partial, unjust and improper arbitrator in the matter. They also deny that any award of the commission to be valid should have been acquiesced in by the said Pena, but that, on the contrary, they

aver, as has been before stated, and as the record of the said commission abundantly shows, that the said commission from necessity came to the conclusion, and did conclude, early in its proceedings that its action should be by a majority, and that the complainant was bound thereby, and these defendants were and are bound by said action, even if their representative should fail to acquiesce in the findings.

These defendants aver as matter of fact that the said Pena had notice of the last meeting, and that he had retired into the office of the counsel of the complainant, to wit, Roderick Robertson. The chairman on the said 22d day of October, 1897, communicated over the telephone with the said Pena and informed him of the sitting of the commission, and the said Pena replied over the telephone that he no longer further considered himself a member of the commission; and that the only reason why the said Pena did not attend the final session of the said commission was because he did not approve of the findings thereof, contrary (1196) to his duty in the premises. The complainant and its counsel had full knowledge and notice of said meeting and failed to attend.

Twenty-second. In answer to the allegations in the 22d paragraph of said bill of complaint contained, these defendants say that they deny that the said Haupt and Schramme misconducted themselves, as alleged in the said 22d paragraph, in that they as a majority of said commission admitted the oral testimony of the said Schramme, one of the said arbitrators. They state that the testimony of the said Schramme as shown by the records of the commission was taken, and at the time of the taking thereof the counsel for the complainant objected to the reception of the same; *but there defendants aver and so state that prior to the decision of the said commissioners the said commission ruled out and excluded from its deliberations all the testimony of the said Schramme, as will appear from the minutes of the same* (Exhibit 20, page 792). These defendants are advised and aver that there was no impropriety in said Schramme stating under oath any facts within his knowledge, but that if there had been any irregularity in his so doing, *that the proceedings were purged of such irregularity by the exclusion of his statements from the record, in the manner aforesaid.* These defendants submit that with such record in existence, charges of such irregularity are unjustifiable and futile.

Twenty-third. In answer to the allegations in the 23d paragraph of the said bill of complaint contained, these defendants say that the matters therein contained are matters of law, and that the true intent and meaning of the agreement between the Republic of Colombia and these defendants, executed on the 4th day of January, 1897 (Complainant's Exhibit No. 12), was that

the said commission was constituted, as hereinbefore stated, at the instance and demand of the United States Government acting (1197) through the Secretaries of State Gresham and Olney, for the purpose of doing justice unto these defendants and the purpose of recompensing them for their losses sustained by the action of the complainant in resuming the concession granted unto the said Cherry and assigned unto these defendants. That under the law passed by the Congress of the complainant (to wit: Complainant's Exhibit No. 11), the authority granted unto the Executive or President of the complainant was to "equitably compromise with the grantee of the railroad from Buenaventura to Manizales," or his lawful representatives, the questions or differences that might arise in consequence of the resumption of said concession by the government. Under the basis of November 27, 1896, page 52, Defendant's Exhibit No. 2, and that accepted by the Executive of the complainant, for the purpose of reaching the settlement proposed (page 976 record), an arbitration should take place for the purpose of effecting the "equitable compromise" authorized by the act of the Congress of the complainant (Complainant's Exhibit No. 11). That said commission was given the right under the second article of the agreement constituting the same to award "a just indemnity for all the works constructed by the company during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the company for use on the railway."

By the 3d article of said act of concord it was agreed that the said just indemnity should be the compensation to the company for all its outlay and expenses incurred in the construction of said works, and by the 4th article of the said act the commission was constituted to fix such indemnity. Throughout the said articles of adjustment, the word "indemnity" was used twice in the 5th article and also in the 9th article, and in the 10th article. So that it was stipulated that the defendants were to be indemnified and made whole by said commission for all their outlays connected with the construction of said railway. As early as the (1198) 3d session of the said commission (on May 24th, 1897, pages 35 to 39) the scope of such submission was discussed by the said commission, and the chairman, Lewis M. Haupt, submitted unto said commission his finding upon the same, which appears on pages 37, 38 and 39 of said record, and part of the said finding was as follows:

"On this basis your chairman believes, and therefore submits, that the spirit and intent of this agreement should not be limited to the strict technical construction of the words "*trabajos y obras*," since their meaning is modified by the verb "*Costear*" (to pay expenses), as well as by that of the term "*indemnizacion*"; but that the Cauca Company should be awarded a sum

of money sufficient to compensate them for all legitimate and necessary expenses incurred in the prosecution of the work; such payment to be made, not as liquidated damages for any liability on the part of either of the high contracting parties, but as full satisfaction for moneys actually invested, the benefits of which must hereafter accrue solely to the Republic of Colombia."

These defendants are advised, and so state, that the complainant is bound by and concluded by the action of the commission in the premises. Such was the effect of this action that the said Pena and the said Cisneros sought the advice of counsel upon the subject as to whether they should proceed any further, and after having received the same continued the arbitration (pages 176 to 180, record, Exhibit No. 19).

Twenty-fourth. In answer to the allegations in the 24th paragraph of the said bill of complaint contained, these defendants submit that the position taken by the complainant therein, to wit, that because this defendant, the "Cauca Company," did not have the management and control of the expenditures upon the said railway, but that the defendant, " The Colombian Construction (1199) and Improvement Company," did, and for the reason that the agreement of arbitration was made with the " Cauca Company" that therefore these defendants cannot recover, is entirely untenable, and is without basis in law or justice. The complainant very well knew that the said concession was made unto the said Cherry, and was by him assigned unto the " Cauca Company"; that the said " Cauca Company " and the said " The Colombian Construction and Improvement Company " were formed for the purpose of carrying out the said concession, and complying with the requirements thereof, and for the purpose of completing the said works. The Cauca Company held the title to the property and concession, and the Republic of Colombia dealt with that company as the representative of all the parties in interest. The said complainant and its representative, the said Pena, and its executive officers in Bogota, and its counsel, all very well knew of the relations between the said Cherry, the said "Cauca Company" and " The Colombian Construction and Improvement Company." The complainant was well aware with whom it was dealing, and whose property it took possession of, and very well knew to whom it owed the indemnity, which it now refuses. The ownership of the stock of the respective companies is all fully disclosed in the records and the relations of the said companies given in the most minute detail. For the purpose of obviating any minute question as to the identity of the beneficiary, or which precise American citizen was injured, and for the purpose of removing every possible objection, a release by " The Colombian Construction and Improvement Com-

pany" was executed. This was in the nature of a quit-claim deed, and filed with the commission, a copy of which is filed with the bill of complaint (Complainant's Exhibit No. 17). So that by the award of said commission justice should be done and the said complainant should be exonerated from all future claims. And these defendants submit that in a matter of international (1200) import, the requirements of special pleading are not exacted, but that it is adequate if all the injured parties are compensated, and that a release be made by the same unto the complainant.

These defendants are advised that the allegations in said 24th paragraph of the bill of complaint contained, to wit: "This complainant does not know whether the said defendant the Colombian Construction and Improvement Company pretends to any claim against this complainant by reason of the premises, nor whether or not it claims any right or interest in the said pretended award of the said Haupt and Schramme hereinbefore referred to, but it is advised and believes, and therefore charges, that the said defendant the Colombian Construction and Improvement Company should be required to discover in this cause what, if any, interests or rights it pretends to have in the premises," is not made in good faith; as the complainant is well aware that the parties in interest holding the stock of the "Cauca Company" are the stockholders of "The Colombian Construction and Improvement Company." They have released all their interests to the complainant by the Exhibit No. 17; and payment of the award so made by the commission will be an entire exoneration and discharge of the complainant for all the injuries received by the stockholders of the "Cauca Company" and the stockholders of "The Colombian Construction and Improvement Company."

Twenty-fifth. In answer to the allegations in the 25th paragraph of said bill of complaint contained, these defendants say that it was abundantly proven in the case that large sums of money were expended by the persons interested in the said "Cauca Company" and in the "Colombian Construction and Improvement Company," and that there was no question before the said commission as to which company made the expenditures, (1201) but that early in the sessions of the commission, to wit, on the 2d meeting, the claim of the Cauca Company was filed (Exhibit No. 9, pages 947 and 958, record), Complainant's Exhibit No. 21. The account aggregating the amount of $962,438.74 is there given as "Claim of the Cauca Company—Expenditures under construction account of the Cauca Company." It was shown in evidence that "The Colombian Construction and Improvement Company" had been organized for the purpose of doing the work of the "Cauca Company," and

that these expenditures were made for and on its behalf. That said expenditures, so stated, were made was not disputed. The books of the company were referred unto an expert chosen by the board without the cognizance or knowledge of the defendants, to wit, Edgar S. Barney, who made the report printed in the evidence taken before the commission, to wit, pages 1001 to 1024. No person for and on behalf of the complainant disputed that such outlays had been made, the only dispute that was before said commission was as to what portion of the same came under the terms of the adjustment.

Twenty-sixth. In answer to the allegations in the 26th paragraph of said bill of complaint contained, these defendants answering say, that it is not true, as therein alleged, that the complainant "had no means of knowing at the time of entering into the said agreement on the 4th day of January, 1897, with the defendant the 'Cauca Company' of the true state of the facts, and that the said Cauca Company had expended no money, and was not pecuniarily interested in the claims for cost of the partial construction of a portion of said railroad." These defendants say that the complainant had full and adequate knowledge that said expenditures were made for and on behalf of the said "Cauca Company" by the manager of the defendant the "Colombian Construction and Improvement Company," the said (1202) Cherry. These defendants incurred said expenditures through the said Cherry and the said Schramme. The complainant was well aware of the fact that the said "Cauca Company" represented all the parties engaged in the enterprise, inaugurated under the concession of the said Cherry, and had issued its stock and bonds on the basis of that enterprise and to carry on the same. These defendants deny that there were any false or fraudulent representations made by said Schramme and his associates. They aver that the said complainant very well knew that the said Cauca Company was the representative of all parties concerned, and that the said complainant dealt with the said Cauca Company upon said basis, and all the allegations to the contrary are made by the complainant for the purpose of giving a specious reason for seeking to repudiate its obligations under its contract and the award of the commission.

Twenty-seventh. In answer to the allegations in the 27th paragraph of said bill of complaint contained, these defendants say that the stipulation entered into between these defendants and the complainant and referred to in said paragraph, to wit, on the 31st day of August, 1897 (a copy of a part of the said stipulation being filed with the complainant's bill of complaint and marked Exhibit No. 18, as appears from the minutes of the said commission, pages 762 to 765, Exhibit No. 20), was made under the following circumstances, and for the objects and purposes

specifically stated therein. The convention or agreement for arbitration provided in the 5th article thereof that the commissioners should " inspect on the ground the works of the railroad and the rolling stock." For the purpose of avoiding the trip from New York to South America, the counsel for the defendants, Marcus Stine, after consultation with the counsel for the complainant, Messrs. Cisneros and Robertson, and also Mr. Pena, (1203) stated that it had been agreed upon between them "that if the company would accept the Government's figures as to the cost of construction, and the value or the price of the rolling stock, and the other things which are conceded by the Government to be due to the company—that, then, they would feel inclined to waive that provision of the convention." Such stipulation was entered into at that time under the foregoing circumstances, and for the purpose aforesaid, said stipulations stated merely what was conceded to be by all parties the expenditure for the particular items of construction therein mentioned. The said stipulation was entered upon the minutes in the following manner:

" It is stipulated by the parties to this controversy that in fixing the amount expended by the company upon the following items of construction work and equipment on and of the Cauca railroad, the commission shall find, in lieu of an appraisement of the items, that said company expended on said items the following sums—that is to say:

Surveys	$ 22,805	00
Completing road from K. 27,100 to K 29,750	40,652	58
Completing road from K. 29,750 to K. 36,740	133,546	55
Work beyond San José	15,328	01
	212,332	14
Rolling stock	21,577	00
Making in all	$233,909	14

" This stipulation is without prejudice to any claim or defence of either party relative to any matter not specifically mentioned above."

(1204) It was also stipulated at the same time that as the expenses of the operation of the road and revenues of the company about balanced each other, for the purpose of avoiding the necessity of going into these accounts, as follows:

" It is hereby stipulated and agreed that the two items in the account known, first, 'Operation and Maintenance,' and, second, 'Revenue of the Railway,' derived from operation, are not to be considered by the commission in determining the questions sub-

mitted for their consideration. This stipulation shall be without prejudice of any kind to any claim or defence of either party relative to any other matter." (Pages 764-5, record, Complainant's Exhibit No. 20.)

The actions of said parties and the admissions and stipulations aforesaid were intended to save the physical trouble and inconvenience of a voyage to the Republic of Colombia for the purpose of investigating these undisputed amounts. These defendants were not aware, neither were the counsel nor the said commissioners aware, that at the time said agreements were made, and these amounts adjusted that the same precluded the commission from considering any other subjects. It only was conceded, that certain stated amounts were expended for certain specific objects, and it was not stipulated, nor was it intended to be an inference from the same, that said amounts were the *only amounts* for which these defendants were entitled to receive indemnity.

It is undoubtedly a fact that the agreement creating the arbitration commission recited that the complainant had paid the defendants the sum of $200,000, but these defendants deny in the most emphatic manner "that no other expenditures within the terms of the submission to arbitration were shown," as alleged in the said 27th paragraph, nor is it a proper inference of law that an award of an amount greater than a conceded amount renders such award invalid, when the said commission was con-
(1205) stituted and appointed for the sole purpose of settling the disputed matters between the parties thereto.

The 10th article in said agreement for arbitration (Exhibit No. 12) specifically recites that the payment of the said $200,000 was considered by the company (these defendants) to be a sum much less than the just price of the works executed by it. And these defendants submit that in the construction of a railroad, and especially a railroad in South America near the Equator, much greater expenses are legitimately incurred than in the mere grading of the same or placing the rails and superstructure thereon.

Twenty-eighth. In answer to the allegations in the 28th paragraph of the bill of complaint contained, these defendants say that the award of the said commission referred to therein, to wit: That the complainant, the Republic of Colombia, should pay unto the Cauca Company, for and on behalf of these defendants, the sum of $452,048.93, in addition to the said $200,000 already paid on account, was a just and proper award within the scope and power of the said commission and properly made by it; and that the award unto the said Marcus Stine of the sum of $10,000 was also a just and proper award, and these defendants deny the allegation in said paragraph that there was no authority to award

unto him any sum whatsoever. And these defendants are advised and so state that under the 12th article of said agreement constituting the commission, it was provided that "the expenses of the personnel, mobilization and plant of the commission shall be paid in advance, in equal shares by the company and the Government of Colombia, and the commission shall decide whether such expenses are to be charged against one or both of the parties." That under said agreement and under the power vested in the said commission it did from time to time order the pay-
(1206) ment of various expenses, to wit, for the printing of the records, for the expenses of the clerk, and especially at the instance and upon the motion of the counsel for the complainant (Cisneros) it did on the 10th day of September, at its 29th session, award Lewis M. Haupt the sum of $6,000 for his services as such commissioner. And these defendants aver that the compensation awarded by the said commission unto the said Marcus Stine for his services as counsel in the case is a just, reasonable and proper award within the scope and authority of the said commission, and a usual item in international commissions or arbitrations such as was the one provided for under the proceedings mentioned in this cause.

Twenty-ninth. In answer to the allegations in the 29th paragraph of said bill of complaint contained, these defendants say that they deny that the award of the said commission allowed unto the Cauca Company any sums for compensation for expenses incurred by it which did not come within the scope of the agreement of January 4th, 1897, or which were outside of the same and without their jurisdiction. As to the item of $33,909.14, the same was the difference between the undisputed conceded indebtedness of the complainant and the amount of $200,000 paid by it as hereinbefore recited. Had the jurisdiction of the said commission been limited to an award unto these defendants of an amount conceded by the complainant and offered to be paid by it, to wit, the said sum of $233,909.14, these defendants submit that the necessity of establishing a commission with the high powers vested in it for the purpose of making an adjudication under the circumstances, is not apparent.

These defendants further deny that the said commissioners exceeded their authority in the premises.

Thirtieth. In answer to the allegations in the 30th paragraph of said bill of complaint contained, these defendants say
(1207) that it is true that the commission did order the stenographic report of its proceedings to be printed, the same has been printed, and that the complainant has filed as exhibits with its bill of complaint the three volumes of testimony and proceedings as its Exhibits Nos. 19, 20 and 21, but these defendants say that the said exhibits are not full and do not contain a complete

record of the proceedings of the said commission; that the argument of the said Marcus Stine was filed with the said commission and ordered to be printed, and also the argument of the counsel for the complainant was filed with the commission and ordered to be printed (September 21, 1897), and the said argument of counsel for the complainant contained certain documents which appeared only in his said argument, and these defendants have filed, as hereinbefore stated, the said arguments of counsel and marked the same Defendants' Exhibits Nos. 1 and 2.

The said minutes of the commission so filed by the complainant are incorrect in some respects. Immediately after page 792 and constituting four pages of the third volume there are inserted certain cablegrams between the President of the Republic of Colombia and counsel for complainant, all of which cablegrams were ruled out of the case by the unanimous action of the commission when it struck out of its records the testimony of Commissioner Schramme (see page 792), and the briefs of the respective counsel should appear immediately after page 828 of the official record. Upon the third line of page 799 (Exhibit No. 21) the word "Company" should be stricken out and the word "Government" inserted; and on pages 911 and 912 the secretary of the commission, Harold R. Miller, has inserted his statement as to the document alleged to have been prepared by the commissioners, to wit, the proposed communication to Secretary of State Sherman at Washington, and the secretary also has inserted: "Mr. Stine, counsel for the company, then instructed (1208) the secretary to tear up the shorthand notes of the meeting, &c." The same matter has been heretofore explained, to wit, that what was torn up was not the notes of the meeting, but the uncompleted draft of the proposed communication to the Secretary of State. These defendants further state that the entry on said page 911, "The chairman stated that such meeting was null and void," is not correct. Upon page 1057 of volume 3 of the record, Complainant's Exhibit No. 21, there appears a letter addressed by the secretary of the commission unto Lewis M. Haupt, chairman, which letter was not received by the said Haupt to the information of these defendants until the 3d day of November. These defendants submit that the exhibits filed by the complainant as the proceedings of the commission should be corrected in the foregoing particulars.

Thirty-first. In answer to the allegations in the 31st paragraph of said bill of complaint contained, these defendants are advised that the award of $452,048.93 is a valid award, duly ascertained by the said commissioners and that the same was within the scope of the authority vested in said commission, and that said complainant is by the terms of its convention bound thereby.

Thirty-second. In answer to the allegations in the 32d paragraph of said bill of complaint contained, these defendants say that they are advised that the award of the sum of $108,-181.42 as salaries for said Schramme and the said Cherry are valid charges against the said complainant, and that the same were legitimately incurred by these defendants in the construction of the works referred to.

And also these defendants further state that they are advised that the item of $148,164.33 due unto the said Cherry for the price of the concession granted unto him by the said (1209) complainant is a due, proper and legitimate charge, and the same constitutes a part of the outlay of these defendants necessary to be incurred in the construction of the said railways, under said concession.

These defendants deny the allegations in the said 32d paragraph of the bill of complaint contained, that the compensation or indemnity to them, was to be restricted solely to the money expended upon physical construction of the portion of the works in the territory of the complainant; that these defendants are advised that the action of the said commission in awarding said amount for the outlay of the defendants in the acquisition of said concession is a due and proper charge. The grant unto the defendants of said concession was registered at Bogota, and the said complainant well knew that these defendants had been subjected to the outlay aforesaid.

These defendants further submit that the legitimate expenses incurred for and on behalf of said defendants by the said Schramme and Cherry in their trips to the Republic of Colombia are proper charges, and that the same were properly allowed; and these defendants deny that the said amount so allowed to said Cherry and Schramme were in the nature of a "bonus" to compensate them for inducing the complainant to execute the convention under which the commission was held. A claim for legitimate travelling expenses was entirely proper.

These defendants are further advised that the allowance by said commission of interest upon bonds of $32,333.40 was a legitimate and proper allowance, and that the same was a proper "construction expenditure," incurred by these defendants with the other items before mentioned, of salaries and price of concession, incurred by these defendants in and about the construction of the said railway.

(1210) These defendants deny the allegation in said paragraph contained that the said Haupt and Schramme confederated and combined together for the purpose if making the said award, and that the same was "exaggerated, unconscionable and inequitable," but these defendants, on the contrary, aver that the same was a very moderate award, and that the losses incurred by these defendants in the prosecution of the said work were not

fully compensated unto them. And these defendants, in justification of the moderate amount of the said award state that the same, on the basis of the kilometers so constructed for and on behalf of these defendants, averaged about $37,620.23 per kilometer. This was an amount less than the complainant paid unto its said attorney in fact, Francisco J. Cisneros, for the portion of the road constructed by him under his concession in 1885, for which compensation was awarded him by the commission of which the said Pena was a member. The said award was strictly proper upon the basis of the decision of the commission that the ward should be a sum of money sufficient to compensate the defendants for the legitimate and necessary expenses incurred in the prosecution of such work, and that such payment was not to be in the nature of liquidated damages, but satisfaction for moneys actually invested by the defendants in the construction of an important work which became the property of the complainant.

Thirty-third. These defendants, in answer to the allegations in the 33d paragraph of said bill of complaint contained, say that they deny that the said commission was restricted in its powers to the finding only of the sum of $33,909.14 in addition to the sum of $200,000.00 paid, which said amount was the undisputed amount for certain work and conceded to be due by the government, but always denied by these defendants as the proper amount due unto them.

(1211) Thirty-fourth. In answer to the allegations in the 34th paragraph of said bill of complaint contained, these defendants say that it is true that the said commission did file copies of their said award with the Secretary of State of the United States and that they did also send a copy of the same unto the diplomatic representative of the Republic of Colombia at Washington, as was there duty to do under the terms of the arbitration aforesaid. And that the said award constitutes an indebtedness of the complainant duly ascertained by means selected by it, and that the filing of the bill of complaint is an attempt on its part to evade its just liabilities.

Thirty-fifth. Further answering, these defendants say that it would not be possible for this honorable court to fully appreciate the arduous duties assumed by them as the successors of the said James L. Cherry in the construction of the public works provided by the concession made unto him by the complainant in 1890 without an explanation other and further than what appears in the allegations of the bill of complaint. Such contract or concession was granted by the complainant, the Republic of Colombia, through its executive officers, and also through its legislative body after it had already made a contract of a

similar nature with the said Francisco J. Cisneros (the counsel of the complainant in the proceedings and its attorney in fact before the Board of Arbitration). Under said contract Cisneros and those associated with him commenced the construction of a railroad from Buenaventura Bay on the Pacific Ocean towards the town of Cali, which is located on the eastern slope of the Andes Mountains. The road was intended to be constructed unto this point, and then to go northerly along the valley of the Cauca river to Manizales in the Department of Antioquia. Through physical difficulties, through the lack of labor, and through the disturbed political condition of the Republic of Colombia, the said Cisneros and those associated with him were (1212) not able to complete the construction of this road. Under the arbitration as already mentioned, Manuel H. Pena acting with another, awarded unto the said Francisco J. Cisneros, as is hereinbefore stated the sum of $1,780,000 (page 680 record, Exhibit No. 20). The said Cisneros had completed about 27 kilometers of railroad in a period of six years and three months. At the time these defendants commenced the work upon said road, this already constructed work had become so dilapidated that it required practically rebuilding. In addition to the construction of the railroad mentioned in the evidence from Buenaventura towards Cali, the grant also vested in these defendants the exclusive right to construct and operate a railway to a port on the Atrato river navigable for vessels of deep draft coming from the Caribbean Sea by way of the Gulf of Darien, and also to construct a railroad from Cali to the Ecquador line, and also a branch to Popayan, which would constitute a large and important system of railways in the fertile region of the Republic of Colombia. On one of the lines so to be constructed there was a large deposit of coal which could have been put at the port of Panama at a price not exceeding $5 a ton, the market value ruling at that port being in the neighborhood of $15 a ton, and the demand being practically unlimited. The stockholders of these defendants, knowing the valuable features in this concession, were abundantly able to furnish the money necessary to construct this railroad. At pages 970, 971 and 972 appear the proffers from the stockholders and others to this effect in June, 1896. Among these stockholders were individuals and houses of the highest commercial standing and great financial strength—the house of Ladenburg, Thalman & Co. being international bankers of well-known responsibility. The obstacles to its successful construction were those growing out of the climatic conditions, the difficulty of procuring and retain-
(1213) ing labor, and the disturbed political condition of the complainant. The Valley of the Cauca river lies between the western and the center ranges of the Andes Mountains, which traverse Colombia north and south. This valley is about 600

miles in length and varies in width to about 100 miles. It is one of the most beautiful and fertile territories to be found in the world. To the west of the western range, lying between it and the Pacific Ocean, extends a stretch or zone of an impregnable tropical jungle. In this zone, with the exception of a very few coast towns, there are almost no inhabitants, the nature of the country making living there almost a physical impossibility, the few settlers being along the river's banks, and of mixed blood—mostly negroes. Through this jungle eastwardly from Buenaventura, a distance of nearly forty miles, the Cauca railroad was to be built before it reached the more elevated habitable country. The purpose of this construction being to penetrate from the Pacific coast through a gorge of the Andes to the Cauca Valley, from whence it was to be extended north and south. The road through this jungle has been almost entirely completed. The portion of the road from Buenaventura to Cali would have been the outlet of the extensive valley of the Cauca river, and access would have been given to the Pacific Ocean, and the trade and commerce of the country almost indefinitely expanded. Through this tropical jungle clearings were required to be made, grading done and the railroad built. The rainfall in this portion of Colombia aggregates 360 inches in the year. In the United States the average rainfall is about thirty inches. In some seasons of the year it is usual to have a rainfall of from 4 to 8 inches within 24 hours. From the proximity to the Equator, and with this volume of rainfall, the vegetation is so rank that it renders the country almost fatal to foreigners. A necessary adjunct to railroad construction in this portion of the Republic of Colombia is a field hospital. It was (1214) almost impossible to procure native labor, and the company attempted to import labor from Jamaica by way of Panama, and went to large expense for the purpose in the year 1891. As soon as the men arrived the greater portion of them deserted at once into the interior. After the large and important bridge had been constructed, as referred to in the testimony, it was washed away; it was rebuilt, and a second freshet carried it away; a third time it was placed on the road, and again it was partially destroyed. The same thing happened in the smaller bridges and culverts.

The country produces absolutely nothing in the shape of manufactured articles necessary in the building of a railroad. Every supply was necessarily imported, and if a small piece of machinery was needed, the work had to stop until it was imported by sea. It was not possible for any person to work for more than two weeks in the month, and labor had to be supplied to keep the work in progress. When the concession was first made the popular feeling was very strongly in favor of the defendants as American citizens, and the officials of the Re-

public, as well as the residents in the Cauca Valley, received them with the greatest cordiality. This is shown by the statement of Mr. Pena, the Colombian Commissioner (pages 101 and 102, record, Exhibit No. 19): "The governments of the Republic and of the Department looked upon this enterprise as of the utmost importance for the Cauca people, and when the news arrived that a contract had been made with a wealthy, high-standing company it was received with rejoicings, and Mr. Cherry became the recipient of continuous ovations." Mr. Pena recognized in his statement a change from this cordiality to a state of great hostility. There was this strong animosity evidenced by the inhabitants of the Cauca Valley against these defendants, and it rendered it almost impossible for them to proceed with their enterprise. A revolution in the politics of the complainant took place while the work was in progress, so that its political condition was unsettled. The animosity against (1215) the defendants was shown by the hostile legislation revoking the concession and putting in jeopardy all their investments. It was at this period when the United States intervened, and from this intervention the commission was constituted.

These defendants have answered fully all the allegations in the bill of complaint, and state that they have done so only for the purpose of vindicating said commission and themselves from the charges made in the bill of complaint, and are advised and respectfully submit that this honorable court is without jurisdiction in the premises to consider and set aside said award, inasmuch as the same was and is in the nature of an international award, of a commission constituted by the said complainant, the Republic of Colombia, in its sovereign capacity through an act of its Congress, passed for the purpose of adjusting the claims made by the United States through its Secretary of State and its diplomatic channels. Said award should not be considered or disturbed by this court, when the said complainant does not fully submit itself unto the jurisdiction of this honorable court, and does not tender itself ready and willing to perform any decree which may be passed in this cause by this honorable court, but invokes its jurisdiction solely for the purpose of impugning the motives and discrediting the actions of the honorable members of the said board selected as aforesaid, so as to leave these defendants wholly without remedy to obtain compensation for their property taken from them unjustly by the complainant.

These defendants deny that there is any other matter, cause or thing in said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of these defendants; all which matters

(1216) and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THE CAUCA COMPANY, by
(Signed) HENRY A. RICHARDSON,
President.

{Seal of Cauca Company.}

Attest:
(Signed) H. R. DE MILT,
Treasurer.

THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY, by

{Seal of Colombian Construction & Improvement Company.}

(Signed) HENRY A. RICHARDSON,
President.

Attest:
E. H. KELLOGG, Treasurer.

(Signed) COWEN, CROSS & BOND,
Solicitors for Defendants.

(1217)
STATE OF NEW YORK,
City and County of New York, } to wit:

I hereby certify that on this fourth day of March, in the year 1898, before me the subscriber, a notary public of said State of New York, in and for the city and county of New York aforesaid, personally appeared Henry A. Richardson, to me personally known, who made oath in due form of law that he is the president of the defendant, the "Cauca Company"; that he has read the foregoing answer to the bill of complainant, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and the year above written.

(Signed) H. MELVILLE WALKER,
[Seal Notary.] Notary Public, No. 99,
New York Co.

(1218)
STATE OF NEW YORK,
City and County of New York, } to wit:

I hereby certify that on this fourth day of March, in the year 1898, before me the subscriber, a notary public of said State of New York, in and for the city and county of New York aforesaid, personally appeared Henry A. Richardson, to me personally known, who made oath in due form of law that he

is the president of the defendant, "The Colombian Construction and Improvement Company"; that he has read the foregoing answer to the bill of complaint, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and the year above written.

(Signed) H. MELVILLE WALKER,
[Seal Notary.] Notary Public.
New York Co.

No. 1.

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IN THE MATTER

of the

COLOMBIA-CAUCA COMPANY ARBITRATION.

BRIEF FOR THE CAUCA COMPANY.

COMMISSIONERS:

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Sr. MANUEL H. PENA, C. E.
Mr. CHRISTIAN F. SCHRAMME, Merchant.

CHAIRMAN:

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Mr. MARCUS STINE, New York, } Attorney for the Cauca Company.

Mr. FRANCISCO J. CISNEROS, New York, } Attorney for the Republic of Colombia.

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SECRETARY:

HAROLD R. MILLER.

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SECRETARY:

(1221)

May It Please the Honorable Commissioners:

The claim of the Cauca Company against the Government of Colombia has been presented to your honorable body at great length.

The defence of the Government of Colombia has been presented with great ability and very clearly.

In view of the stipulations in regard to the items referring merely to physical constructions, as well as those referring solely and only to operation and traffic receipts, it will not be necessary to discuss more than one question in this summing up. That one question is as to the proper meaning of the terms of the convention, as applied to the question whether or not this plaintiff was to be "made whole" or whether the Government of Colombia was to be allowed to take the fruits of the plaintiff's labor, and pay therefor simply and only what the rails, ties, excavation, bridges, etc., and the rolling stock, had cost.

There are a number of words which bear very closely on this question. They are the words "just indemnity," "work of all kinds," "construction," and "enterprise."

In trying this case the Government has sought to give the various paragraphs contained in the convention (notably the second, third and fifth) a meaning, which, according to the opinion of this plaintiff, is not justified by the wording of the convention; not justified by the circumstances which preceded the making of the convention, and not justified if due consideration is to govern the determination of the rights of the parties when the expenditure of time, money, health and the relinquishment of great privileges and great future profits are to be taken into account.

Manifestly the Government and the Company intended to meet one another in a fair spirit; otherwise the words of Article First that the Government and the company compro-
(1222) mise and declare terminated all differences pending between both parties on account of the contract, &c., would never have been inserted in the convention; for, in order that the parties may have reached a compromise which terminated all their differences, it may be fairly presupposed that they were both satisfied that the convention made ample provisions for the just settlement of these differences.

It must not be taken for granted that the parties would have compromised and terminated their differences unless both were satisfied that the settlement or compromise of these differences meant a fair and just arrangement between them.

If a construction of the contract can be found which is repugnant to the notion that both parties believed that the convention provided a fair and reasonable settlement of their differences, then it should be forthwith rejected, for it is not to be assumed that either party would deliberately enter into a contract whereby it would be unreasonably and unfairly treated.

The presumption is that both parties, in order to be satisfied with the terms of the convention, must have believed that it gave each ample protection.

If there is any doubt in the minds of the commission on this point, it should lean toward the side which presupposes that the parties intended to do what was reasonable and fair.

Generally speaking, then, it would not seem reasonable, nor fair, nor probable, that the Cauca Company, having a claim for $963,000 for moneys spent and obligations incurred "during the time the enterprise was in its charge," should accept as a "just indemnity" for the surrender of a valuable concession and of all the line of road which had been built by it, and receive therefor, the sum of $233,000; for it should be so remembered that the Cauca Company, in surrendering its concession and its road, surrendered valuable rights and privileges; surrendered an actual road which was earning for its owners an income latterly of $14,000 a month; surrendered its prospective profits from the haul and sale of coal;

surrendered its preferential rights to land and the extensions of
(1223) the Cauca railway to Antioquia, &c.

Disregarding for the moment the question of whether or not the particular words which this commission has to pass upon have a narrower or a more enlarged meaning, I would ask each one of your honorable commission to place himself for a moment in the position of the two parties to this contract.

On the one hand, a company which has been invited by the Government to take over an old road and extend the same and operate the same had, at the end of seven years, expended or incurred debts, in operation, construction, administration and otherwise, of $963,000. The Government, being desirous of acquiring said property and in order to compromise and settle the differences between itself and the Cauca Company, says to the Cauca Company, "Here, we want you to accept for the concession, plus the railway, plus the income of the railway, plus the future earnings of the railway, plus the $963,000 which you have expended, a sum equal to $233,000."

The negotiations preceding the making of this convention were long drawn out and extending over a considerable period of time, and unless it can be shown that both parties, according to the terms of the convention, deliberately understood when the convention was made and expressed in the most unequivocal language the fact that they had agreed that in consideration of the company's surrendering the aforesaid $963,000, plus the concession, plus the income arising from the operation of the road, plus the many rights and privileges heretofore mentioned for the paltry sum of $233,000, this commission will not be justified in assuming or inferring that the parties did agree to such a preposterous and absurd bargain.

Taking into view the circumstances surrounding the making of this convention, we have uncontradicted testimony that the President of Colombia offered the company, in settlement of the company's claim, the sum of $400,000 gold in cash.
(1224) It is to be presumed that the Government and the company knew, when this offer was made, that the cost of the naked physical construction was but $233,000. Would reasonable men, under these circumstances, agree to litigate before this commission the question of what the company was to receive, when, at most, the company could receive $233,000, after months of labor, expense and anxiety, when without litigation, without a contention of any kind, they could receive at the hands of the Government a sum equal to $400,000, or $167,000 in excess of what the Government's representatives claim the company should now receive.

If the company was to receive only $233,000 as a just indemnity for the work it had performed during the time the enterprise was in its charge, why were the books of account to

be examined in New York? Why should a commission be appointed at great expense, which should travel to New York, engage lawyers, stenographers, etc., etc., when a simple appraisement of the naked physical work done would enable persons appointed to appraise the physical cost alone to determine on the spot what the naked cost of construction had been?

If the convention had intended that only the repayment of the cost of the actual physical construction should go to the company, why was not a provision made that only a board of engineers should be entrusted with the appraisal? Why did the company three times reject the offer of the Government to have a board of engineers appraise the work? They must have had some reason for doing so. The sworn statement is made that the company did reject the Government's offer to appoint engineers. This is uncontradicted.

As a matter of fact, the convention is silent on the subject of what the vocation of the members of the commission shall be. One member of the commission at least is not an engineer, and the Colombian Government was well aware of the fact that this member was not an engineer, and, nevertheless, acquiesced in the convention. The member of the commission who was to (1225) be appointed jointly by the Government of Colombia and the Secretary of State of the United States might have been a merchant or a physician or a clergyman, so far as any restriction by the convention on the choice of this third member is concerned.

If it had been intended that a simple appraisal on the ground of the naked physical cost of building the road had been intended, why was the commission given 210 days, or seven months, in which to make an appraisal, when this could have been done at the time that the road was delivered, by a body of experts, in less than two weeks' time?

Why was it necessary that the commission should hold its sessions in New York; examine witnesses there; examine books there; appoint experts there, if it was simply and only a question of appraisal?

Speaking generally, then, the surrounding circumstances, as well as the provisions of the convention, as well as the silence of the convention on certain important and material points, lead to the irresistible conclusion that it could not have been intended that the company was to be paid solely and only the amount expended for naked physical construction.

If this conclusion were not justified, then the company would have at once accepted the $400,000 in cash; it would not have been necessary to examine the books in New York; it would not have been necessary to give the commission 210 days to reach a determination; in a word, it would not have been necessary to appoint the commission, as constituted, at all; and

the company would not have rejected the Government's offer to appoint a commission of engineers; the contract would not be silent on the qualifications of the members of the commission, but would insist on the fact that they must be engineers; the contract would not speak of a "just indemnity," but would speak only and solely of repaying the company for the bare physical construction; the contract would not speak about indemnifying the company for "work of all kinds done during the time the enterprise was in the company's hands"; the company (1226) would not, and could not, have handed in a claim for $963,000, because, if it was contemplated that they were to be repaid the bare cost of building the road-bed and furnishing the equipment, such a claim would be fraudulent, and the presumption is that a person does not present a fraudulent claim, but a truthful one, and, unless it can be shown that the same is fraudulent, this commission should assume that the company's claim is an honest and truthful one, and presented in good faith, and no evidence whatever has been introduced which would intimate that the claim is fraudulent; furthermore, this commission must not, and should not, assume that this company should have representing it men with so little sense that they would give up deliberately a franchise which, together with the moneys that the company had expended in building, operating and administering the railroad, had cost the company $963,000, from which it was deriving an income at the time of the surrender of about $170,000 Colombian gross, equal to about $70,000 gold per annum; that it would surrender the valuable rights under its concession, whereby, among other things, if it completed the road to Cali, it would receive net from the Government, irrespective of passenger and freight earnings, interest moneys at the rate of 5 per cent. on $6,000,000 gold for eighteen years, equal to a sum to be received by the Company from the Government, from this one source alone, of $5,500,000 in gold; that it would give up the prospects of a large fortune to be derived from hauling and selling the only true bituminous coal deposit of large extent and fine quality on the Pacific coast; that it would give up its preferential rights to large tracts of valuable lands, containing precious metals, abundance of valuable timber, vast tracts well suited for grazing and agricultural purposes; and, beyond all these, to surrender the railroad which had been built by Mr. Cisneros, being 20 kilometers of completed road, and 10 kilometers of nearly completed road which the company owned, and for which Mr. Cisneros and the Government had (1227) expended over $2,000,000, and all this, forsooth, for the magnificent "just indemnity" of $233,000!

Now, let us turn to the convention itself. It may be said in all fairness that the weighty paragraph of the convention is Article Second.

Taking the translation as rendered by Mr. Olcott, which was used as a basis for examining and cross-examining many witnesses, we find the following language used:

"The company surrenders absolutely the concession to which Article I. of the contract approved by Law 16 of the year 1890 related, and within fifteen days next following the day on which this agreement shall be approved shall deliver to the Government of Colombia the Cauca railway, with all its fixed plant, rolling stock on hand, work of every kind done, buildings, tools, utensils of all kinds, appurtenances, etc.

"In consideration therefor the Government of Colombia is to pay to the company a just indemnity for the work of every kind completed by the company during the time the enterprise (undertaking) has been in its charge, and for such rolling stock and other things imported by the company for use on the railway which are now in existence."

The original translation contained in place of the word "enterprise" (undertaking) the word "railway," and we will assume that this was an unintentional mistranslation. Mr. Cisneros and nearly all the other witnesses also testified that in place of the word "completed" there should be substituted the word "done," so that the second half of this paragraph would read as follows:

"In conideration therefor, the Government of Colombia is to pay to the company a just indemnity for the work of every kind done by the company during the time the enterprise (undertaking) has been in its charge."

It is necessary to get at the meaning of the various words used in the last half of this article in order to know how the same is to be interpreted.

(1228) Leaving out of consideration for a moment the various opinions of learned scholars, lawyers, business men and authors familiar with the Spanish language, and, taking the Government's translation as above amended by their own witnesses, let us see how the important words in this paragraph are defined by Webster's Dictionary:

INDEMNIFICATION.

"First. The act of indemnifying, *saving harmless* or securing against loss, damage or penalty; reimbursement of loss, damage or penalty.

"Second. That which indemnifies, preserves from harm or injury, or reimburses."

INDEMNITY.

"First. Security to save harmless; exemption from loss or damage, *past or to come;* security from penalty or punishment of past offences.

"The owner of private property taken for public use is entitled to compensation or indemnity." (Shaw, Kent.)

"Second. Indemnification, compensation or remuneration for loss, damage or injury sustained."

WORK (OF EVERY KIND).

"First. Exertion of strength; effort directed to an end; toil; labor; employment; particularly in man, manual labor.

"Man hath his daily *work* of body and mind appointed." (Milton.)

"Second. The matter on which one is at work; that upon which one spends labor; material for working upon; subject of exertion; the thing occupying one, as to take up one's work, to drop one's work.

"Come on, Nerissa, I have work in hand that you not yet know of." (Shakespeare.)

(1229) "Third. That which is produced as the result of which one spends labor; material for working upon; subject performance; fabric; manufacture; or in a more general use, *act, deed, effect, result, achievement, feat.*

"Fourth. Hence specifically: (*a*) *That which is produced by mental labor;* a composition; a book as the Works of Addison. (*b*) Flowers, figures, &c. (c. pl.); structures in civil, military or naval engineering, as docks, bridges, embankments, trenches, fortifications and the like; also the structures and grounds of a manufacturing establishment, as iron works, locomotive works, gas works and the like."

ENTERPRISE.

"First. That which is undertaken or admitted to be performed; a bold, arduous or hazardous attempt; an adventure; an undertaking, as a manly enterprise or a warlike enterprise.

"Second. Willingness or eagerness to engage in labor which requires boldness, promptness, energy and like qualities, as a man of great enterprise."

UNDERTAKING.

"First. That which is *undertaken; any business, work or project which a person engages in or attempts to perform;* an enterprise.

"Second. Specifically, the business of an undertaker, as the management of funerals."

Now, taking the latter half of Article Second and putting for the important words the fitting and proper definitions of the same, we have the following:

"In consideration therefor the Government of Colombia is to pay to the company a just "compensation" (indemnification, remuneration, saving harmless or securing against loss, damage or penalty) for the work of every kind done (act, deed, effect, result, achievement, *both mental and physical*) by the company during the time the "undertaking" (business, work or project) has been in its charge."

(1230) We claim that this is a broad, just and fair rendition of this important Article Second. The commission will kindly note that this article does not mention the word "construction" in any way. It is a general sweeping, pregnant, comprehensive statement of what the Government is to do, and what the company is to do, to wit: The company is to give its concession, which includes all its rights thereunder, together with the structure and rolling stock, to the Government, and in return therefor the Government is to pay the company a just compensation or remuneration for the work of every kind done by the company during the time the undertaking, project, enterprise, has been in its charge. The project, enterprise, undertaking, was in its charge from the date that the responsibilities of the company in relation to the project commenced. They commenced on the day that James L. Cherry signed the contract whereby he undertook, under certain forfeitures and penalties, to do certain work under certain conditions, and the Government on its part undertook to do *do* certain things in relation to the work. Consequently, by the language of Clause 2, the commission must pay a just compensation, remuneration, indemnification, to the company from the time that James L. Cherry, who was the assignor of the company, put his name to the bottom of the original concession, up to and including the last day upon which the enterprise (the project, the undertaking) was in charge of the Cauca Company.

Unless the Cauca Company is repaid everything properly spent by it during this time, the commission will not award to it a just compensation (indemnification, remuneration) for the work of every kind done during the time the undertaking, enterprise, project has been in its charge.

This Article Second is a clear defining of what the commission must find. Then follows Article Third, which in no way modifies Article Second, but simply seeks to express the fact that both parties agree beforehand to accept as the just and only indemnity a sum which shall be equivalent of what (1231) the company shall prove it has disbursed in every kind of work done by it in the construction of said railway and for rolling stock, etc., etc., imported for use in such railway.

The word "construction" in Article Third, as well as in Article Fifth, wherever used, has not the narrow philological meaning which the Government seeks to give it.

The verb "to construct," according to Webster's synonyms of the word, means "to build; erect; form; make; originate; invent; fabricate"; showing that it does not mean only physical construction, but something which includes forming, making, originating, inventing; in other words, not only the physical act of building, but the mental act, which precedes and accompanies the physical act, and without which the physical act cannot be done. A man constructs a theory; a man constructs an equation; a man constructs a new system of philosophy; he constructs a constitution for the government of a state; in fact, there is no mental process of any kind which does not involve construction.

If, then, the Government is to pay to this company a just compensation (remuneration, indemnification) for work of every kind (mental and physical) done by it during the time that the undertaking, enterprise, project was in its charge, then it must pay to the company that which was necessary in order to enable the company to live at all, which was its charter. Uncontradicted evidence, written and oral, has been introduced showing that the company paid, or obligated itself to pay, to James L. Cherry, at the very inception and creation of the Cauca Company, a sum equal to $135,000 for the charter itself. The project could never have been "in charge of the company" had it not bought the charter and paid for it. The charter is its very life, and without it the project would never have had any existence.

During the time that the enterprise, undertaking, project was in charge of the company, those persons who had the direction of its affairs were obliged to travel, to make efforts of all (1232) kinds, as one of the Government's witnesses (Mr. Adams) very correctly stated, "to keep itself alive." Is there anything more important to the carrying on of this project, enterprise, undertaking than to keep itself alive?

The likening of these expenses, of travelling and officers' salaries, to the food and raiment which the individual contractor requires, as stated by Mr. Adams, has nothing, according to Mr. Adams, to do with the cost of the road, while the food and rai-

ment which the laborers on the road require, and the superintendents, etc., on the road must have, have something to do, according to Mr. Adams, with the cost of the road.

It seems quite evident that the laborers and the superintendent on the road would very soon have neither food nor raiment if the officers and directors who were keeping the project alive had to starve and go naked.

On what theory Mr. Adams is able to say that the mental work done by those who conceived the enterprise and who had charge of its execution and direction is less valuable than the labor of those who were mere pawns or machines who did the work that they were told to do, it is hard to understand.

It is the old socialistic theory of LaSalle and Marx that manual labor alone adds value to work produced; that the director of the factory, for instance, the man who designs the machinery, who advances the capital with which the machinery is bought, who puts up the buildings, who buys the raw material, who organizes the office, who engages the expert technical men, and uses judgment and discretion and care in their selection; who inquires into the commercial standing of the customers; who fixes the length of time for which credits are to be given; who himself arranges for the credit which is to be extended to the factory by the banks; that he, this director, contributes nothing to the value of the product.

Our friends on the other side are placing themselves in the same position that the social democratic agitators are placing themselves in, and this is said without any reflection upon their (1233) good faith, for many of these social democratic agitators are sincere men. But who can mean that the man who conceives the project of building the factory, who furnishes the means with which to do it, who engages the technical heads, who organizes the office, and does all the other things except the manual labor, is not as important and not as necessary for the carrying on of the *work of constructing the product of this factory* as the boy who sweeps up the shavings or the dross alongside the lathe or the planer. And if the bookkeepers were not there, how could the accounts be kept, the stock be taken, the pay-rolls made out; and if the designers were not there, how could the concern successfully create that which would please the eye or any other one of the human senses; and if the directors did not meet and direct the policy to be pursued, how could the concern successfully compete and keep alive?

Now, so far as the *work of constructing the product of this factory* is concerned, suppose the factory to be situated in Chicago, and the directors to meet in New York, providing the two are in touch with one another, either telegraphic or otherwise, and are well informed as to what is going on, what rule is there by which it can be said that because the directors are

directing from a distance; that because the clerks are keeping the books at a distance; that because the purchasing agents are purchasing at a distance; that therefore the directors, the clerks, the purchasing agents, etc, etc., have nothing to do with the work of constructing the product of this factory!

Are usefulness, efficiency, capacity, intelligence, diligence and all the other qualities which go to make up competent directors, servants, agents, bookkeepers, technical men, etc., to be subjected not to the usual and ordinary tests of their fitness, but solely and only to a geographical test?

Can there be a more grotesque conception of what is essential to the carrying on of a great work?

According to this contention, the consulting engineer in New York, the directors, the purchasing agent, the bookkeepers, (1234) etc., will have contributed nothing toward the work of every kind done by the Nicaragua Canal Company during the time that the project will be in its charge, unless they all move down to Nicaragua, and stay with the project until it is done. Of course, this will add immeasurably to the value of their services.

Strange is it, indeed, that such eminent authorities as Trautwein, Haupt, Menocal and the consulting board of engineers of the Nicaragua Canal Commission, as well as a host of other authorities which might be cited, should not take this same view of what is meant by work of every kind done during the time that the enterprise was in charge of the company. For if this were so, how could Professor Haupt include other items of expense besides those of mere cost of materials and labor, such as engineering, superintendents, machinery, plant, interest on money invested, a fair allowance for contractor's profit, insurance, if necessary, and a percentage for contingencies? A strange oversight in Professor Haup's work that he should mention interest on money invested, without speaking of it as local interest, and confining it to local interest on money. Why does he not also speak of local insurance only, if the insurance is taken in a company outside of the place where the work is done? On this theory, it is not one of the items of expense to be considered, and above all, a percentage for contingencies. How can Professsor Haupt speak of a percentage for contingencies without limiting it to local contingencies?

Take, then, Trautwein, who adds other items which Professor Haupt does not mention, such as officers of the company, stationery, rents, printing, law expenses and other incidentals. Why has not Trautwein spoken of local engineers, local superintendents, local officers of the company, local stationery, local printing, local law expenses and local incidentals?

Strange fatuousness on the part of these authorities of engineering matters, that they should say nothing about local ex-

penses as applied to these very items just enumerated. Then, too, take the report of Commander A. G. Menocal on the Nica-
(1235) ragua canal made on the 31st day of January, 1890. Why does he include management and contingencies 25 per cent., without confining it to local management and local contingencies; why does the Board of Consulting Engineers not confine it to local management and local incidentals and local specified and unspecified contingencies of construction 20 per cent.? Is there some law of nature which is known only to the Government's representatives whereby the word "local" here is to be injected and understood as being intended?

In neither of these works, in neither of these reports, nor in the convention itself, is there any mention of local expenses only.

When paragraph 2 says that a just indemnity for the work of every kind done by the company during the time the project has been in its charge is mentioned, by what legerdemain must this commission inject the word "local" in order to make it conform to the contention of the Government? Would it not say that the Government shall pay a just indemnity for the local work of every kind done by the company during the time the project has been in its charge? By what right can this word "local" be forced to do service, when there is no reference to it from one end of the convention to the other? And yet the Government's witnesses have, in a number of instances, testified that this was its meaning. On the other hand, the company's witnesses have testified that this was not its meaning.

Disregarding the Spanish words as used, and taking the Olcott translation as it has been given here, it seems impossible to limit the words "work of every kind done" to anything else but work of every kind done; and work of every kind done by the company means the work of securing the charter, the work of securing the engineers, the work of surveying the route, the work of taking care of the sick, and for this purpose of building hospitals and importing medicines, the work of selling the securities of the company in order to obtain the means with which to do the work of building the road, the work of travelling in order to look after the company's affairs, the work of negotiating
(1236) with the Government for the purpose of settling controversies between the company and it, the work of examining the concession and drawing the charter under which the company was incorporated, the work of advising the company as to its legal rights and its legal status in questions between it and the Government, and it and other persons; in fact, every kind of work, just as the convention states, must be considered by this commission to have been intended to be waived and a just indemnity paid therefor.

Much of the time of this commission was taken up in trying

to determine what the original Spanish words "*obras y trabajos, costear, ejecutado,*" etc., etc., might mean. One of the Government's witnesses said it would not include hospital stores; another said it would. One of the Government's witnesses said that the one word meant "superstructure," and the other words meant "earthworks." The other witness said there was no such distinction.

Most of the Government's witnesses allowed local administration, local superintendents, local clerk hire, etc., to be covered by the words "*obras y trabajos,*" although, as said before, there is nothing in the contract to limit these words to such a meaning.

It is very possible that the error, for such we claim it is, arises from the fact that this contract has been looked upon by the Government representatives as an engineering contract. Nothing could be further from the truth. This is not an engineering contract. This is a contract for the settlement of a controversy in reference to a project which originally included engineering as an important element of consideration; but engineering was only one element which went to make up the things to be considered in relation to this project. There are many other things to be considered; there were questions of traffic which had nothing to do with engineering, and which are not related directly to engineering; there were questions of bookkeeping which were not directly related to engineering; there were legal questions which had nothing to do with engineering; there were questions of purchasing supplies, medicines, (1237) &c., which were not in any way directly related to engineering; and the list might be lengthened *ad infinitum.*

The question to be settled is not a question affecting merely the technical side of the project. If this were so, Article Second, as per Olcott's translation, would read:

"In consideration therefor the Government of Colombia is to pay to the company a just indemnity for the local engineering work of every kind done by the company during the time the project undertaken has been in its charge."

But the convention does not so state, and there is no power in existence which will authorize the commission to assume that an important ellipsis of this kind must be supplied by this commission.

The commission would not be justified in determining the rights of the parties by such an inference. It must take the words, not as they would be used in a purely engineering contract, but as they are universally used, and when work of every kind in relation to a project is spoken of, work of every kind is meant, and not something less than work of every kind.

On the other hand, the witnesses for the company and many of those witnesses who have given their written opinions

to Professor Haupt, declare emphatically that the words as used embrace many other things besides the local cost.

Mr. J. S. Elliott states that the words "*no va a costear los trabajos*" mean "it will not pay expenses; meaning that the returns will not pay for *everything* expended," and Mr. Elliott underlines the word "everything," and he goes on to say, "The article seems to divide cost into two parts. One incident to construction in Colombia, and the other covering importations necessary to the completion of the work according to contract. It is hardly necessary to point out that administration charges, such as possible office rent, clerk hire, attorney's fees, etc., *in New York or any other foreign place*, should be distributed over the various expenses and form a part of the same as much (1238) as the pay-rolls of the various gangs. Of course, I refer to legitimate expenses."

This explanation of the words is both reasonable and just, and is exactly what is contended for by this company. Legitimate expenses of every kind must be paid to the company in order that it may receive a just indemnification, compensation, remuneration for the work of every kind which it has done while the enterprise, undertaking, project was in its charge.

If the Government can show that any of these expenses were not legitimate, were not proper, were wasteful, were fraudulent, were ill-considered, then such expenditure should properly be deducted from the claim made by it.

Mr. Del Monte, the procurement of whose opinion was suggested by the Government, includes, among other things, the judicial and legal disbursements.

Mr. Ponce de Leon, an eminent Spanish scholar and lawyer, has testified at great length and under a searching cross-examination that every legitimate expense must be included in the just indemnification to be paid to this company.

There is evidently in this case, as in many others, a difference of opinion among experts as to the scope and meaning of the words employed. This is a common condition of affairs, and it is often found that human language and human power of expression are so limited and often so uncertain in their meaning that the courts of all countries have laid down certain rules which are to govern in case that there are latent or patent ambiguities in a contract, a convention, a statute, a will or any other instrument calling for the employment of expression in words.

The law on this subject has undergone a decided development, and the modern tendency is to allow a much wider latitude in the introduction of outside parol testimony than was formerly done, but even as early as the time of Lord Bacon it was recognized that the ends of justice demanded in certain cases

the explanation of written instruments, however sacred in their character.

(1239) I have added at the end of this summing up a brief on this subject which the commission will find attached hereto.

But in determining the question of the meaning of words which may be capable of several interpretations it is a safe rule, which is broadly stated by Mr. Justice Story in his work on the Constitution of the United States, in which he says:

"We are obliged to collect the sense partly from the words and partly from conjecture of the intention. The rules then adopted are to construe the words according to the subject matter *in such a sense as to produce a reasonable effect and* with reference to the circumstances of the particular transaction. Light may also be obtained in such cases from contemporary facts or expositions; from antecedent mischiefs; from known habits, manner and institutions, and from other sources almost innumerable which may justly affect the judgment *in drawing a fit conclusion of the particular case.*"

And further on he states: "In reference to construing the Constitution of the United States on these principles, we must consider its nature and objects, its scope and design, and to determine the scope, object and design of the instrument, we must look at the history of the times of its adoption and previous thereto, the evils that the Constitution was designing to remedy; the condition of affairs under the old Federation, *and also the contemporary exposition and its clauses by those who framed it to be found in the Federalist and other writings.*

The last words of this opinion of Mr. Justice Story that we must look at the contemporary exposition and its clauses by those who framed it, has a momentous bearing on this question.

If the commissioners find that the words by themselves as used in the convention are not clear, and in view of the conflicting evidence on both sides, we think this a task free from difficulty, then and in that case the commission, in order to have light "must look at the contemporary exposition and its clauses (1240) by those who framed it." Now, who framed it? C. F. Schramme, one of the commissioners, representing the Cauca Company, and His Excellency, Mr. Caro, the President of Colombia, assisted and aided by the Honorable Luther B. McKinney, the American Minister at Bogota.

We have the undisputed evidence of Messrs. Schramme and McKinney on this point, and what do they testify to in effect? McKinney states that the President, in discussing the question of negotiating this convention, stated to him that he did not desire any American to lose any money through the Government of Colombia; that he wished the company to be reimbursed for every dollar which it had expended. If he did not wish any American to lose any money in Colombia, he did

not wish this company to lose any, because it was an American company. If he wished this company to receive back every dollar which it had expended, he meant every dollar which it had legitimately expended; that is to say, not fraudulently, not wastefully, not improperly.

In the letter which he wrote to McKinney he states in explicit terms:

"And trust that you will feel assured that while this Government may involuntarily commit errors, the fallibility of human criticism being known, it always desires to act *equitably and just*."

Further, he says:

"Mr. Cañon communicated to me an answer from Mr. Cherry of a definite character which contained some new phases as one exacting $30,000 indemnity for the voyage which he made to Bogota. This indemnity I cannot concede, not on account of its amount, but because such a concession on the part of the Government would be tantamount to a declaration that the law had caused damage, and because it would prejudge against the Government the question which is to be decided by arbitration."

Now, let us stop for a moment to see what this means. The President does not concede the $30,000 indemnity for the first voyage which Mr. Cherry made to Bogota. Why? Because (1241) it was not part of the cost of construction? That does not seem to be his reason. He adds that he cannot concede this indemnity; and note that he uses the word "indemnity" here, not on account of its amount, but because such a concession on the part of the Government would be tantamount to a declaration that the law had caused damage and because it would prejudge against the Government the question which is to be decided by arbitration.

Then, according to the President, the question of this class of damage is to be decided by arbitration. He does not refuse to pay this indemnity because it is not part of the cost of construction, nor on account of its amount, but because it would prejudge against the Government the question which is to be decided by arbitration. In other words, he concedes that something is due to the company, whether it be $30,000 or $50,000, or whatever sum it may be, providing the commission find what sum it is, and he does not put it on the ground that the Government's representative before this commission had done, but puts it on the sole ground that it would prejudge against the Government the question which is to be decided by arbitration.

If, as the Government's representatives have contended, only the question of the cost of construction locally was to be passed upon by this commission and nothing else, why does the President state that this commission of arbitration is to pass

upon this question of compensation for travelling expenses? Why did not the President's letter state that the company was not to receive anything for travelling expenses at all, rather than leave it to the commission to decide what it was to receive? Could there be any clearer proof of what was in the mind of the President?

If Messrs. Cherry and Schramme had handed in a claim for compensation for travelling expenses, and the convention were limited to the meaning now contended for by the Government, would not the President at once have said, "This is not the subject of arbitration; you are to pass only upon the cost of construction?"

(1242) Following out this line of reasoning, let us examine for a moment the power of attorney from the Cauca Company to Mr. Cherry, which refers clearly and unequivocally to a contract which the Colombian Construction Company had with Mr. Cherry, and on being asked by one of the Ministers what this referred to, Mr. Schramme stated that it was money which the company owed to Mr. Cherry for the concession. This power of attorney was on file with the Government before the convention was entered into. The attention of the Government was called to the fact that such a claim existed. The Minister was told by Mr. Schramme that if he settled this matter with the Cauca Company the Government had nothing to do with the Colombian Construction Company's claim, as the Cauca Company would settle with the Colombian Construction Company.

In other words, the Government was informed that part of the claim consisted of the price which the Cauca Company had agreed to pay to Mr. Cherry, and yet it took no means to state expressly in the convention that it repudiated this claim, or that it refused to pay it, or that the convention was not to go into the consideration of this claim, leaving the entire question open, from which we may fairly conclude that it knew and intended that this claim should be classified like all the others under the head of an indemnification for moneys of all kind expended by the company. The American Minister and Mr. Schramme have both testified that they refused to accept any agreement or convention which limited the scope of the convention to an appraisal by engineers, and they have both stated that the Government acquiesced in the making of a convention which should have for its basis the *examination of the books of account in New York* in order to determine what the actual expenditure of all kinds of the company had been. This is uncontradicted by the evidence of any one on behalf of the Government, and must be considered by this commission as being of the greatest importance in determining this question of intention.

(1243) Take, furthermore, the conversation between the President and McKinney which referred to the various propo-

sitions which had been submitted for consideration by Mr. McKinney to Mr. Caro. Each one of them contemplated the payment of a large sum of money; the smallest being $600,000, the largest offer one million. Mr. McKinney testifies that he informed the President that if he did not accept a cash compromise then, that if that proposition, under which this commission was organized under the convention of January 4, 1897, were called into existence, the Colombian Government would have to pay over $900,000 and probably over $1,000,000 in order to satisfy the claim of this company; that the President answered that he was aware of this fact, but that he preferred to have it settled by a commission, so that the people of Colombia should know that the settlement had taken place in due form.

If the President of Colombia had in mind that only the local cost of construction was to be repaid, amounting to $233,000, and with the able assistance of that eminent engineer and railway constructor, Mr. F. J. Cisneros, at his elbow to advise His Excellency, we must assume that he knew that the cost of construction would not exceed $233,000, how are we to reconcile the President's acquiescence in a convention which contemplated, according to Mr. McKinney's statement to the President, the repayment of over a million dollars, if the President believed that the repayment was to be confined to the cost of bare construction alone?

We have further evidence of the filing with the Government of Colombia of a balance sheet by the Cauca Company, showing that at the time of the filing the claim of the company was over $800,000, and that to this interest and other items had not yet been added.

Is it reasonable to suppose that if the Government believed the company entitled to only $233,000 for the bare cost of construction, it would allow itself to be drawn into making a convention based on a claim which itemized traveling expenses, interest and all sorts of other items which were exclusive of bare cost of construction, and had intended to pay only local (1244) cost of construction, that they would have made a contract which was so general and vague in its terms that it did not clearly and specifically set forth in so many words, "This commission shall, however, consider nothing else than the naked cost of constructing the road-bed, exclusive of general administration and other expenses, and confine itself solely and only to determining what the excavations, bridges, culverts, track, rolling stock cost, and nothing else?"

Another circumstance which speaks volumes for the company's contention is to be found in the proceedings which antedated the making of the convention of January 4th, 1897, and which shows conclusively (if the other facts enumerated herein

did not already do so) what the scope of the convention was meant to cover.

The Minister of Hacienda, Ruperto Ferreira, insisted on a commission of three engineers who were to appraise the work on the spot. The company declined to accept the Minister's suggestion. The Minister insisting on such a commission which was to appraise the local work of construction, the company declined to do so, and asked to be repaid for all its expenditures. As a result of this stubbornness on the part of both sides to the controversy, the President himself was compelled to take up the negotiation, and having agreed with the company's representative on the "basis of the convention" which covered the repayment to the company of all its outlays, requested Mr. Ferreira on behalf of the Government to sign this contract. Mr. Ferreira declined to do so. The President demanded his resignation, which was at once tendered. The Minister of Finance, Antonio Roldan, was then called upon to sign the basis of the convention on behalf of the Government, and he so signed it.

Thus we see clearly that the discussion of this very subject which has taken up so large a part of the time of this commission antedated the making of the contract, and actually produced a ministerial crisis, in which the Minister of Hacienda (1245) was forced out of office, because he would sign no other contract than one which called for the repayment of the naked cost of construction and nothing else.

Having before it the claim filed by Mr. Cherry for travelling expenses; having before it the inventory filed by Mr. Cherry, including all these other items; having before it the power of attorney filed by Mr. Cherry referring to the claim for the price of the concession; having before it the recalcitrant Minister of Hacienda and the fact of his expulsion from office, why should this astute and careful Government have been satisfied to allow such a clause to slip in as the one stating that the Government is to pay to the company "a just indemnity for the work of every kind done by the company during the time the enterprise (project, undertaking) has been in its charge?"

There is only one reasonable explanation for these apparent conflicts, and that is, that the Government knew that it was called upon by the terms of this convention to pay every legitimate expenditure, and that it was prepared to do so, when it signed the convention.

In conclusion, I desire to call the attention of the commission to the "Diario Oficial" of the 27th of April, 1897, containing a contract for the construction of the Cauca railway from the station at San Jose to the City of Palmira, between the Government and Victor Borrero and Ignacio Munoz. This document, while not offered in evidence at the sessions of the commission, is nevertheless a public document issued by the

Colombian Government, and this commission will therefore take judicial notice of the same.

Among its many clauses I desire to call attention to the fact that the concessionaires have ten years' time within which to construct the railroad from San Jose to Palmira, which is over twenty kilometers less in length than the proposed road which the Cauca Company was to construct to Cali. It allows, according to Article 30, $40,000 for maintenance. According to Article 32 it allows $320,000 Colombian money for reconstructing the old line; it allows $38,000 gold per kilometer (1246) for the first twenty kilometers. equalling $760,000 gold. This includes seven kilometers which have been already partially graded by the Cauca Company. It allows $65,333 gold for the next seventeen kilometers, which equals $1,110,661 gold, and $40,000 per kilometer for the balance of the line to Palmira (about one hundred kilometers), which would equal $4,000,000; so that all told the Government allows this new company a little over $6,000,000 in gold, if the $320,000 Colombian for reconstructing the old road are included.

The terms above mentioned show clearly what the Government itself believes this work will cost. I think it may be fairly inferred that the Government is willing to treat its own citizens better than it treated the Cauca Company, and is now willing to treat it.

In view of all the facts hereinbefore presented to this commission, I hardly think the commission can find otherwise than that, if the full claim of the Cauca Company is paid, it will not have received a just indemnity for all that it has done, for all that it has relinquished, and for all that it has suffered.

(1247) IN THE MATTER
OF
THE CAUCA COMPANY ARBITRATION.

Memoranda as to Interpretation of a Written Contract by Extrinsic Parol Testimony; In What Cases Allowed, Etc.

The law on this subject has undergone a decided development, and the modern tendency is to allow a much wider latitude in the introduction of outside parol testimony than formerly, but even as early as the time of Lord Bacon it was recognized that the ends of justice demanded in certain cases the explanation of written instruments, however sacred in their character.

Lord Bacon says on this subject:

"There be two sorts of ambiguities of words; one is *ambiguitas patens*, and the other, *latens*. *Patens* is that which appears to be ambiguous upon the deed or instrument; *latens* is that which seemeth certain and without ambiguity for anything that appeareth upon the deed or instrument; but there is

some collateral matter out of the deed that breedeth ambiguity. *Ambiguitas patens* is never holpen by averment; * * * * but if it be *ambiguitas latens*, then otherwise it is."

And, speaking of statutes, Bacon says on the same line:

"By an equitable construction a case not within the letter of the statute is sometimes holden to be within the meaning, because it is within the mischief for which a remedy is provided. * * * *

"In order to form a right judgment whether a case be within the equity of the statute, it is a good way to suppose the (1248) lawmaker present, and that you have asked him this question: 'Did you intend to comprehend this case?' Then you must give yourself such answer as you imagine he, being an upright and reasonable man, would have given. If this be that he did mean to comprehend it, you may safely hold the case to be within the equity of the statute, for while you do no more than he would have done you do not act contrary to the statute, but in conformity thereto."

Parsons, in his work on Contracts, showing the limitations of Lord Bacon's remarks above quoted with respect to the difference between a *patent* and a *latent* ambiguity, and showing the law to have developed to even a greater extent as regards the introduction of parol evidence to explain a written instrument, says:

"The rules of Lord Bacon rest entirely upon the principle that the law will not make, nor permit to be made, for parties a contract other than that which they have made for themselves. They can have no other basis than this; and so far as they carry this principle into effect they are good rules, and no further.

" * * * Thus, if a contract be intelligible and evidence shows an uncertainty, not in the contract, but in its subject matter or its application, other evidence which will remove this uncertainty is admissible. But, if a contract is not certainly intelligible by itself, it may be said that evidence which makes it so must make a new contract, for one that is intelligible cannot be the same with one that is unintelligible, and therefore the evidence is not admissible. But this argument must not be carried too far, for it is not always applicable without much qualification. What, indeed, is the meaning of uncertainty? If words of a foreign language are used, the contract is uncertain until they are interpreted; if words which are merely technical, then it is uncertain until experts have given their meaning; if words which are applicable to two or three different things or persons, then it is uncertain until the (1249) one thing or person is pointed out. Now, where does the law stop in this endeavor to remove uncertainty? We answer, not until it is found that the contract must be set aside

and another one substituted before certainty can be attained. In other words, if the contract which the parties have made is incurably uncertain, the law will not, or rather cannot, enforce it, and will not, on the pretence of enforcing it, set up a different, but valid, one in its stead. * * * On the other hand, the law will not pronounce a contract incurably uncertain, and therefore null, until it has cast upon it all the light to be gathered either from a collation of all the words used or from all contemporaneous facts which extrinsic testimony establishes. * * * It is sometimes of doubtful utility to refer to these rules (Lord Bacon's rules) in the endeavor to ascertain the meaning of a contract, rather than to the simpler rule that evidence may explain, but cannot contradict, written language." 2 Parsons on Contracts, Star paging 562.

The illustrious Justice Story, in deciding the case of *Peisch* v. *Dickson*, in the United States Circuit Court for the District of Massachusetts in 1815, showed how much broader the doctrine was becoming, in the use of the following language:

"It is not very easy to reconcile all the decisions upon the subject of *latent* and *patent* ambiguities. * * * Nothing is clearer than the general rule—*latent* ambiguities may be removed by parol evidence, for they arise from the proof of facts *aliunde*. * * * But *patent* ambiguities rest in the contract itself, and, if the language be too doubtful for any settled construction by the admission of parol evidence, you create and do not merely construe the contract. * * The difficulty, therefore, lies not in the rule itself, but in applying it to particular cases. * * * There seems, indeed, to be *an intermediate class of cases* partaking of the nature of both (1250) *patent* and *latent* ambiguities, and that is where the words are all sensible and have a settled meaning, but at the same time consistently admit of two interpretations according to the subject matter in the contemplation of the parties. In such a case I should think that parol evidence might be admitted to show the circumstances under which the contract was made and the subject matter to which the parties referred. For instance, the word 'freight' has several meanings in common parlance; and if by a written contract a party were to assign his freight in a particular ship, it seems to me that parol evidence might be admitted of the circumstances under which the contract was made, whether it referred to goods on board of the ship or an interest in the earnings of the ship; or, in other words, show in which sense the parties intended to use the term."

The modern development of the law and the rule as applied to this third species of ambiguity intermediate between *patent* and *latent* is shown very fully in the American and Eng-

lish Encyclopædia of Law, in the edition of 1896. The encyclopædia says:

"A *patent* ambiguity is one which arises upon the words of the will, deed or other instrument as looked at in themselves, and before any attempt is made to apply them to the object which they describe.

"A *latent* ambiguity is one which arises not upon the words of the will, deed or other instrument as looked at in themselves, but upon those words when applied to the object or subject which they describe.

"There is also an ambiguity recognized in cases involving principles which are scarcely referable to either *latent* or *patent* ambiguities. It arises when on mere inspection there does not appear to be any uncertainty or ambiguity, and frequently grows out of the careless use of language, *and it sometimes results from the many shades of meaning that usage and provincial habit accord to some word or impression.* Out of this has grown a seeming modification of the old rule as to *patent* ambiguities which has been characterized as an intermediate (1251) class of cases partaking of the nature of both *latent* and *patent* ambiguities.

"It has been laid down in many cases as a general rule that extrinsic evidence is not admissible to remove a *patent* ambiguity. * * * This rule, however, should be stated with qualifications. The true doctrine seems to be that while direct evidence of intention is not admissible in the clarification of ambiguous terms in writing, proof of collateral facts and surrounding circumstances existing when the instrument was made may be properly admitted in order that the court may be placed as nearly as possible in the situation of the testator or the contracting parties, as the case may be, with a view to adjudge in what sense the language of the instrument was intended to be used, and to apply it to the subject matter.

"Under this rule the meaning of ambiguous terms in an instrument may be fixed by showing that particular significance has become attached to those terms by reputation or usage.

"It is a well-settled rule that in cases of *latent* ambiguities, parol evidence is admissible in explanation thereof. * * * In the case of ambiguities of the intermediate class, parol evidence may be admitted to show the circumstances under which the instrument was made, and the subject matter to which it refers." American and English Encyc. of Law, Vol. 2, second edition, page 288 *et seq.*

The same Encyclopædia says, in relation to the interpretation of an ambiguous instrument, that "the condition of the parties and surrounding circumstances are to be considered. He who interprets should, as far as possible, put himself in the position of the parties at the time the writing was executed.

This is only another way of saying that the intention of the parties should govern. Regard must be given to the occasion (1252) which gave rise to it, the relative position of the parties, and their obvious designs *as to the object to be accomplished.*" *Ibid.*, Vol. 2, first edition, p. 513.

The same work quotes Lord Ellenborough as saying, in the case of *Robertson* v. *French*, 4 East., 137, that words in a contract "are to be understood in their plain, ordinary and popular sense, unless they have generally, in respect to the subject matter, as by the known usage of trade or the like, acquired a peculiar sense distinct from the popular sense of the same words."

It is also said in the Encyclopædia that "where the words have acquired an exact and technical meaning in any trade or business, and are used in a contract relating to such trade or business, they will be given that meaning, and not the meaning the words have in a more popular use." *Ibid.*, p. 515.

Even the rules of grammar do not control if it is clear that the parties used the expressions incorrectly. *Ibid.*, 516. See, also, *Ibid.*, Vol. 23, p. 68. Also, Parsons on Contracts, Vol. 2, Star paging 512.

"It makes very little difference whether the instrument in question be a contract, will or statute; for obviously the cardinal rule to be observed in them all is to ascertain the intention of the writers." American and English Encyc. of Law, first edition, Vol. 2, p. 522.

"But contracts are not as strictly construed as statutes, nor wills as strictly as contracts." *Ibid.*, p. 522.

The following excerpts from judicial opinions are quoted in illustration of the doctrines above set forth. The great Chief-(1253) Justice Marshall, in deciding the well-known constitutional case of *Gibbs* v. *Ogden*, 9 Wheaton, 189, says:

"If from the imperfection of human language there should be serious doubts respecting the extent of any given power, it is a well-settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction."

Judge Bradley, of the New York Court of Appeals, in deciding the case of *Kenyon* v. *The Knights Templar Aid Association*, 122 N. Y., 247, said:

"As a general rule, the construction of a written instrument is a question of law for the court to determine, but when the language employed is not free from ambiguity, or when it is equivocal and its interpretation depends upon the sense in which the words were used in view of the subject to which they relate, the relation of the parties and the surrounding circumstances properly applicable to it, the intent of the

parties becomes a matter of inquiry, and the interpretation of the language used by them is a mixed question of law and fact."

Judge Folger, in the case of *The People ex rel. Jackson* v. *Potter*, 47 N. Y., 375, citing no less an authority than Chancellor Kent, in discussing the interpretation of statutes, says:

"The intent of the lawmakers is to be sought for.

"When it is discovered it is to prevail over the literal meaning of the words of any part of the law. And this intent is to be discovered not alone by considering the words of any part, but by ascertaining the general purpose of the whole, and by considering the evil which existed, calling for the new enactment and the remedy which was sought to be applied. And when the intent of the whole is discovered, no part is to be so construed as that the general purpose shall be thwarted, but all is to be made to conform to reason and good discretion. And the same rules apply to the construction of a constitution as to that of a statute law."

(1254) In the case of *People* v. *Fancher*, 50 N. Y., 288, Judge Allen, of the New York Court of Appeals, says:

"The same general rules which govern the construction and interpretation of statutes and written instruments generally, apply to and control in the interpretation of written constitutions. They are made by practical and intelligent men for the practical administration of the government, and they are to receive that interpretation which will give effect to the intent of the framers as deducible from the language employed, and operate most benignly to the interest of the governed, and best harmonize with and give effect to the general scope and design of the instruments. As in other written instruments, the intent and design of a particular provision being ascertained from the words used, effect will be given to it in harmony with such intent and design. If words have a doubtful meaning, or are susceptible of two meanings, they should, within the rule, receive that which will effectuate the intent of the framers of the constitution and the general intent of the instrument."

Judge Earl, of the New York Court of Appeals, in deciding the case of *Riggs* v. *Palmer*, 115 N. Y., 506, says:

"It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. The writers of laws do not always express their intentions perfectly, but either exceed it or fall short of it, so that judges are to collect it from probable or rational conjectures only, and this is called rational interpretation; and Rutherford, in his Institutes (p. 407), says: 'When we make use of rational interpretation, sometimes we restrain the meaning of the writer so as to take in less, and

(1255) sometimes we extend or enlarge his meaning so as to take in more than his words express.' "

Mr. Justice Story, in his famous work on the Constitution of the United States, lays down these rules of interpretation of written instruments:

"The first and fundamental rule in the interpretation of all instruments is to construe them according to the sense of the terms and the intention of the parties. Mr. Justice Blackstone has remarked that the intention of a law is to be gathered from the words, context, the subject matter, the effects and consequences, or the reason and spirit of the law. He goes on to justify the remark by stating that words are generally to be understood in their usual and most known signification, not so much regarding the propriety of grammar, as their general and popular use; that, if words happen to be dubious, their meaning may be established by the context or by comparing them with other words and sentences in the same instrument; that illustrations may be further derived from the subject matter with reference to which the expressions are used; that the effect and consequence of a particular construction is to be examined, because, if a literal meaning would involve a manifest absurdity, it ought not to be adopted, and that the reason and spirit of the law or the causes which led to its enactment are often the best exponents of the words and limit their application. * * * It is only where there is some ambiguity or doubt arising from other sources that interpretation has its proper office. There may be obscurity as to the meaning from the doubtful character of the words used from other clauses in the same instrument, or from an incongruity or repugnancy between the words and the apparent intention derived from the whole structure of the instrument or its avowed object. In all such cases interpretation becomes indispensable."

There is more to the same effect, and, in speaking of the case of words which admit of two or more senses, the author continues:

(1256) "We are obliged to collect the sense partly from the words and partly from conjecture of the intention. The rules then adopted are to construe the words according to the subject matter in such a sense as to produce a reasonable effect and with reference to the circumstances of the particular transaction.

"Light may also be obtained in such cases from contemporary facts or expositions; from antecedent mischiefs; from known habits, manners and institutions, and from other sources almost innumerable, which may justly affect the judgment in drawing a fit conclusion of the particular case."

The author goes on to state that, in construing the Constitution of the United States on these principles, we must consider its nature and objects, its scope and design; and, to deter-

mine the scope, object and design of the instrument, we must look at the history of the times of its adoption and previous thereto, the evils that the Constitution was designed to remedy, the condition of affairs under the old Federation, and, also, the contemporary exposition of its clauses by those who framed it, to be found in the "Federalist" and other writings. 1 Story on the Constitution, sec. 400 *et seq.*

MAY IT PLEASE THE HONORABLE COMMISSION:

(1257) I received the brief and summing up of Mr. Francisco J. Cisneros and Mr. Roderick R. Robertson. If nothing else, this summing up shows that these gentlemen have earned the lasting gratitude of the Government they represented before this commission, for their untiring industry and diligence.

I venture to say that no fee, however large, which might be paid these gentlemen, could compensate them for the vast amount of labor which they have put into their summing up. They have quoted th riginal concession which was already in evidence; they have quoted the extension of the law; they have quoted the contracts made between Cherry and the Cauca Company and the Colombian Construction and Improvement Company; they have quoted the basis of agreement, as well as the convention of January 4, 1897; they have quoted Professor Amy's translation; they have quoted Mr. Olcott's translation; they have quoted their own accounts; they have quoted the estimates of Mr. Carter; they have quoted my summing up, all *in extenso*, and, while it might seem unnecessary to quote all these documents, it nevertheless must be borne in mind that the summing up has a vastly more formidable look when these documents are included, and the approval of the Government of Colombia, for which these two gentlemen have often during the sittings expressed such anxious solicitude, should be granted to them without reserve; the Encyclopædia Britannica or Allison's History of the World might have been welcome additions to their brief.

The company has no answer to make as to their interpretation of the meaning of the convention, as this has already been done in my summing up. No doubt all the quoted contracts and documents have been correctly reproduced, and all the i's have been dotted and the t's have been crossed, in the Government's brief.

(1258) I am furthermore sensible of the high honor that these gentlemen have bestowed upon me in including my opening address in their summing up, and as they say: "But in thus giving it permanency and a certain degree of publicity, we protest that we are not actuated thereto by any feeling of malice against either the company or its polished and learned counsel."

I am grateful to them for incorporating my summing up

in their master-opus and thereby saving it from oblivion. Happy the man who has such generous opponents!

What these gentlemen have to say about the shortcomings of the Cauca Company and about it being a fraudulent and bankrupt concern, does, however, suggest the query whether or not it is wise for the representatives of the Colombian Government to thus characterize the Cauca Company. Is it wise for people in glass houses to throw stones?

The Cauca Company owes no moneys to any persons but those who acted for it while it was in trouble because of the actions of the Colombian Government. Whatever debts it owes or obligations it has incurred, which have not been paid, are due to this one fact alone. It has no creditors who are not members of its own household, being either its officers or its stockholders. So far as all outside debts are concerned, it has faithfully and fully discharged the same at all times, and particularly in Colombia, where it does not owe one penny.

If this company was a bankrupt and defaulting concern, what did Mr. Cisneros mean, when, in the meeting of the commission, it was stated that the Government, without notice of any kind, had forfeited the company's rights and franchises, by exclaiming, "That is the only wrong the Government has done"? There can be no doubt that this exclamation of Mr. Cisneros was, like all his statements, the result of an honest impulse, and he, with his admirable zeal for the interests of the Government, would never have admitted that the Government was wrong in this one thing, unless out of the "fullness of the heart the mouth had spoken."

(1259) The commission had received the official document from the commissioners appointed by the Colombian Government to examine the railroad at the time the same was taken over by the Government and subsequent to the making of the convention of January 4, 1897. According to said report, which stands uncontradicted, the Colombian Commissioners found the road in better condition than it had been when delivered over, and stated further that its general condition was very good.

Are we to assume, in view of the Government's statement about "letting the road run down," that the commissioners for the Colombian Government, appointed for the purpose of passing upon the question of the condition of this road, were falsifiers, and that their official report was an untruthful instrument, or are we to take the words of Messrs. Cisneros and Robertson, as to its being in a "run-down" condition? We believe neither of these two gentlemen has ever seen the railroad since it passed into the hands of the Cauca Company.

The powerful imaginations that these two gentlemen have developed in their masterly summing up raises an issue with the commissioners of the Colombian Government on this very

important point, and I leave it to this commission to determine whether or not (so far as the question of the condition of the road is concerned) the report of the examining commission is to be decisive.

Turning now to another subject of your cogent and succinct summing up, the commission will please note that, by a species of ratiocination for which the Greeks might envy you, you have satisfied yourselves that the Cauca Company has no interest in this controversy, and that, therefore, the Colombian Government does not owe this claimant anything.

Don't you know that the power of attorney from the Cauca Company to James L. Cherry recited and referred to the existence of contracts with the Colombian Construction and Improvement Company? And, even if you do not know this, is (1260) it not a fact that testimony has been offered before the commission that the Colombian Construction Company was the owner of all the stock of the Cauca Company; that the stockholders of the two companies were identical; that the directors in one company were also in part directors in the other, and that the books of account as kept were the faithful, legitimate and honest books representing the doings of what was substantially one company? These books have been examined by a disinterested expert, who pronounces them properly kept, and states that all the vouchers were at hand to verify the expenditures claimed to have been made; that the entries appear to have been made chronologically and as cause for the same arose, and that all these books were regular and such as a company should keep. Why have you nothing to say on this subject? Why do you leave Mr. Barney's report on this branch of the case lying by the roadside? Why don't you show that the expenditures were fraudulent? The most that you can say is that Mr. Schramme and Mr. Cherry received a great amount of money, and that they feathered their own nests. In this great amount of money which they received, you should remember that from your total is to be deducted $135,000 and interest, which was to be paid to Mr. Cherry for the concession, and which he has not received; this contract to pay for the concession was freely entered into between him and the stockholders, and its validity has never been questioned. The $50,000 was paid to Mr. Schramme and to the estate of Mr. Cherry for two trips made to Bogota, one lasting six months and one lasting seven months, from the latter of which Mr. Cherry did not return alive, and Mr. Schramme returned in bad health. In addition to this were expenses in this same matter occurred in Bogota for agents, attorneys, etc., amounting to thousands of dollars; so that if you add the $135,000 to the $50,000, plus the sums paid to the agents, &c., in Bogota, you will find that these gentlemen received nothing during these years, except the salaries which the stockholders

and directors had voted them, the one a salary of a little over (1261) $7,000 and the other a salary of a little over $12,000, surely not sums so excessive as to call for comment when the character and nature of the work to be done by these gentlemen are to be considered. Neither of these men could do any other work or attend to any other business during these eight years, and I do not think that the commission will find that they were paid an excessive sum for their services. The $50,000 which was paid to them for their services in recovering the $200,000 from the Colombian Government was voted by a large meeting of the stockholders held in this city. The vote was practically a unanimous vote, as you will see from a perusal of the minutes.

The achievement of securing from the Colombian Government the $200,000 cash was so unexpected by the stockholders that I verily believe that they would have been willing to vote even a larger sum to these gentlemen.

The argument of my learned friends here in connection with the question of the relations between the Colombian Company and the Cauca Company tend to show that by a species of thimble-rigging there was only one person who was personally benefited by the existence of these companies (that he owned them outright), and that was Mr. James L. Cherry.

The stock books and the certificate books of the company have been at all times at the service of this commission and of the counsel on the other side. If they will take the trouble at any time to examine the same, they will find a list of nearly fifty stockholders who had paid sums ranging from $1,000 to $20,000 for their shares in this company, and who are waiting most anxiously to receive back some of it as the result of the award which they confidently expect to receive from this Commission of Arbitration.

The interests which Mr. Cherry had in this company was represented by $20,000 of bonds for which he paid, and 2,000 shares out of a total of 20,000 shares, which in part were given to him in payment for the concession, and part bought by him for cash.

(1262) I want to call attention to a very interesting state of facts—to wit, that the extension of the concession for two years, which was entered into by the Executive of Colombia with the Cauca Company in good faith, and which invited them to continue work and expend large sums of money on the construction of the road and otherwise, is now labelled as "illegal." In other words, this fraudulent and bankrupt company made a contract with the executive head of the Colombian Government long after the company has been alleged to have been fraudulent and bankrupt, whereby the term was extended for two years, and the executive head of the Government committed an illegal act when he granted this extension. Is it not a little bit late

in the day for these learned gentlemen to pass upon the legality of this extension, which has never come up in the sessions of this commission, and which properly could only be passed upon by a legal tribunal before which the question could come in due form? Is this commission to pass upon the laws of Colombia and their legality? And then, go a step further, and see what these two gentlemen state; not only that they state that this was an illegal extension, but that the "invalid pretended extension" was obtained by the fraudulent pretext that the concessionary was desirous of introducing 3,000 Chinese laborers to work upon the railway.

What is the nature of Article First of the so-called "invalid extension"? "The Government, in view of the authority conferred by Article First of Law 64, concedes permission to the Cauca Company for the introduction into the country up to 3,000 Chinese laborers, who were to be destined only and exclusively to the work of said railroad." In other words, the company was granted permission, if it chose, to introduce 3,000 Chinese laborers. The "invalid extension contract" nowhere puts upon the company the duty to introduce these laborers; it grants them *permission* to do so.

Now, is this a case which calls for the stigmatizing of the acts of this company as fraudulent? If a person permits me to (1263) do a certain thing, and I fail to do it, am I thereby to be branded as a fraud?

So far as a logical order of argument can be found in the great mass of documentary material which has been accumulated to make up the brief of counsel for the Government, it appears that they rest their contentions upon the following separate grounds:

First. It is claimed, at great length, that the Cauca Company properly forfeited the road and its rights under the concession by a failure to finish the work within the period limited in the original grant, and for other violations of the terms of the conditions of that grant or concession, which, under its terms, were punishable by forfeiture.

Second. It is claimed, on the part of the Government, that the Cauca Company has no standing and is entitled to no award whatever, because the Cauca Company kept no books of account as against the Government, and is an empty corporation, created by what they are pleased to call a species of jugglery, and that the company interested, if any, is the Colombian Construction and Improvement Company.

Third. It is claimed on the part of the Government that, under the terms of the convention submitting the question involved to arbitration, the company is limited to an award for the actual disbursements for local construction only.

Fourth. It is claimed on the part of the Government that

if the commission decides that any other element of expense enters into this award, they have gone outside of the terms of the convention, and their award will be null and void.

So far as concerns the first ground of argument, it is sufficient to say that the question of whether or not the Cauca Company had forfeited its rights under the concession is not involved (1264) in this arbitration. Whether the company did forfeit its rights or not under the terms of the original convention, the Government decided to do the just and fair thing, and, under the terms of the convention for this arbitration, agreed that, though the Government would insist upon the retention of the road, the arbitration tribunal was to award to the promoters of the enterprise the amount actually expended by them in the work. It is therefore begging the question to rake up a matter which cannot, in the most remote way, logically influence the deliberations on the question submitted. If it is intended to impress the commission with the general unworthiness of the Cauca Company's claim, that is a matter which can be safely left to the prior statements of counsel and the testimony taken—perhaps somewhat irrelevantly—on this branch of the history. But the Cauca Company is quite willing, and has shown this willingness in its summing up, to leave the question here to be decided, rest within the bounds that have been set for it by the convention between the parties.

Any attempt to go outside of these well-defined grounds ought to argue weakness in the case of the side which attempts it.

Second. Let us see what the Government calls a jugglery of corporations: The Colombian Government granted to one Cherry a right or concession to build a road and operate it through its country. The Government's counsel argues that Cherry, actuated by the wicked motive of creating the impression of corporate stability, formed a corporation known as the Cauca Company, and transferred to it all his rights under the concession, the company agreeing in its turn to issue to him all its stocks and bonds. Counsel goes on to argue with great seriousness that the proof of the fact that this was mere jugglery is that Cherry was the only man interested, and was to own all the stock and bonds in this company. "What use to incorporate?" they seriously ask. While it was never anticipated that the argument of the simple question involved in this (1265) case would lead to any such digression as a discussion of the uses of corporations in modern commercial life, and while we therefore have no desire to go into any disquisition on this question for the benefit of counsel, two reasons might be mentioned, commonly known to modern business and professional men, for the incorporation of enterprises of this character. The one is that Mr. Cherry desired, of course, to take in many partners in this enterprise, and considered that the easiest way to

do this would be the comparatively simple one of selling them securities in a corporation, rather than drawing articles of copartnership with every investor, however small. The other reason is that these investors who were to go into the enterprise—some in a greater and some in a lesser degree, but none of whom was to make it his principal business and abandon his other enterprises—did not desire to become partners in the enterprise and become liable for all its debts, but desired to have their risk limited to the extent of their respective contributions to the corporation's capital, and this plan of investment can only be secured through the methods of incorporating.

But Mr. Cherry did not rest content with this simple plan, but immediately formed another corporation known as the Colombian Construction and Improvement Company, and made an agreement with the last-named company that he would transfer to it his contract with the Cauca Company—to wit, his right to build the road for the Cauca Company—and to receive in payment therefor all the Cauca Company's stocks and bonds, provided that the Construction Company would employ him and pay him $135,000 for his concession and the preliminary work necessary to secure it.

This was only in line with the usual course of railroad enterprises—the incorporation of two separate companies; the one the railroad company proper, and the other the construction company.

The Colombian Construction and Improvement Company thus became entitled to be the owner of all the stocks and bonds (1266) of the Cauca Company, and therefore its only stockholder. The two companies were managed by the same officials, and the Colombian Construction and Improvement Company kept the books of account applicable to both.

When this convention was made it was seen that any award which this tribunal might make to the Cauca Company would, of course, be the property of the Colombian Construction and Improvement Company, since that company owned all the securities of the Cauca Company, and to establish the award it was, of course, necessary to introduce into evidence the books of account kept for both companies.

If the value of the award was to be the amount which the Cauca Company had expended, this would be the same as the amount which the Colombian Construction and Improvement Company had expended, since the Cauca Company owed the Construction Company exactly what the Construction Company had expended. It owed the Construction Company its stocks and bonds for the work, and the stocks and bonds were worth the value of the investment, and the value of the investment was the amount expended by the Construction Company. To obviate, however, any question which the Government might

raise on this point, and to show its spirit of fairness and to relieve the Government from any anxiety lest another claim might be put in against it by the Colombian Construction and Improvement Company, and whose existence as the construction company for the Cauca railroad had been known to the Government, the Colombian Construction and Improvement Company executed a release which is quoted in full in the argument of opposing counsel, whereby it expressly relinquished any claim which it might have against the Government, and acknowledged that it had no claim except such as arose in its behalf as the only stockholder and bondholder of the Cauca Company, and released the Government from any obligation to pay anything further than such amount as might be awarded to the Cauca Company.

(1267) Yet, in the face of all this, counsel argues on no basis seemingly other than the complications of the situation that this is unfair jugglery, while it is really civilized financing.

Third. As to the third ground—to wit, the extent or breadth of the convention in its relation to the items which are to be considered in making this award—we have already discussed that so fully that it is not necessary to say anything further here. We are quite content to leave this branch of the case to the arguments as already presented by both sides.

We might say, however, in answer to some of the claims set forth by opposing counsel in their brief, that, when they speak of the intention of the framers of this convention as shown by the testimony, it is respectfully submitted, on our part, that the intention clearly appears to award to the promoters of this enterprise a complete and full *indemnity* for all that they have expended.

Taking their own contention, that the Government has agreed to waive the forfeiture of this road out of its generosity and mercy rather than because, as we claimed, we were justly entitled to demand it, even from their own standpoint the Government's attitude is this:

"We will be generous and waive the forfeiture of this road. We shall take it, but we shall pay you all that you have legitimately expended. You have had much trouble, labor and expense in this work. You have expected great profits. These expectations you must relinquish; but, although we are entitled to do so, we will not rob you altogether; we will pay you what you have actually spent." What kind of fairness or generosity, then, would it be to award us what we have expended for a limited number of items, which constituted only a small fraction of our actual legitimate expenditures? The intention was to *indemnify*—to make us whole—and for that purpose we respectfully submit that the commission shall not throw out one

(1268) item of expenditure, save any which they believe has been fraudulently, recklessly or wantonly made.

Fourth. The last argument is no argument at all; it is a threat. These gentlemen come before the commission, and they practically say: "We contend that the convention allows you the right only to award moneys for this and that item. Under the meaning of these terms, which we admit were sufficiently ambiguous to justify us in calling in expert after expert to testify as to their meaning, we say that you have no right nor power to award any further moneys than those we have indicated. If you differ from us—if you believe that the terms were broader than the limits which we have set for them—then we give you notice, now, that, if you make your decision and award in accord with your own opinion and not in accord with ours, *we shall treat your award as null and void, and not obey its mandates.*"

It is respectfully submitted that the commission in reaching its determination has nothing to do with this threat, but that it is to do its duty only according to its best lights, and make such award as it considers the terms of the convention and the evidence call for.

MARCUS STINE.

No. 2.

(1269) Filed 7 Day of March, 1898.

L. B. DELLICKER, Clerk C. C. U. S. D. W. Va.

BEFORE THE

COLOMBIA-CAUCA COMPANY ARBITRATION COMMISSION,

Created under the Convention of 4th January, 1897,
Between the Republic of Colombia and
"The Cauca Company."

IN THE MATTER OF THE ARBITRATION

OF

THE CLAIM OF THE CAUCA COMPANY

AGAINST

THE REPUBLIC OF COLOMBIA.

BRIEF ON BEHALF OF THE REPUBLIC OF COLOMBIA.

COMMISSIONERS:

Professor LEWIS M. HAUPT, C. E.
Señor MANUEL H. PENA, C. E.
Mr. CHRISTIAN F. SCHRAMME, Merchant.
Professor LEWIS M. HAUPT, Chairman.

SECRETARY:

Mr. HAROLD R. MILLER.

Mr. FRANCISCO J. CISNEROS, New York, } Attorney in fact for the Government.

RODERICK ROBERTSON, New York, } Counsel for the Government.

Mr. MARCUS STINE, New York, } Attorney for the Cauca Company.

(1270)

BEFORE THE

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FRANCISCO J. CISNEROS, New York, } Attorney in fact for the Government.

RODERICK ROBERTSON, New York, } Counsel for the Government.

Mr. MARCUS STINE, New York, } Attorney for the Cauca Company.

(1271)
Before the Tribunal of Arbitration, created by the Convention of January 4, 1897, between the Republic of Colombia and The Cauca Railway Company.

IN THE MATTER

OF

THE ARBITRATION OF THE CLAIMS OF THE CAUCA RAILWAY COMPANY UNDER THE CONVENTION ABOVE REFERRED TO.

LEWIS M. HAUPT,
MANUEL H. PENA, and
CHRISTIAN F. SCHRAMME, } Arbitrators.

BRIEF ON BEHALF OF THE REPUBLIC OF COLOMBIA IN OPPOSITION TO THE CLAIMS OF THE CAUCA RAILWAY COMPANY.

STATEMENT OF FACTS.

Concession.

On and prior to the 27th day of August, 1890, the Republic of Colombia owned and operated a steam railroad running between the Pacific Port of Buenaventura, in the State of Cauca, in the Republic of Colombia, and the settlement of Cordova, also in the same State.

Cordova was situated 20 kilometers and 240 meters eastwardly from Buenaventura.

(1272) At the date aforesaid the road had been completed to a point 27 kilometers and 100 meters east of Buenaventura (except the building of a bridge over the San Cipriano river), which point was 6 kilometers and 860 meters east of Cordova; it had also been partly completed for a further distance of 2 kilometers and 650 meters or to kilometer 29 and 750 meters. This 27 kilometers, 100 meters of completed road and 2 kilometers and 650 meters of partly completed road, had been constructed by Mr. Francisco J. Cisneros under a concession formerly owned by him, but which, in September, 1885, he surrendered to the Government, with the constructed and partly constructed road specified, and its equipment.

Mr. Cisneros surrendered his said concession because the enterprise under the then existing conditions, was of so unpromising a nature that adequate capital could not be induced to embark in it, although the Government had agreed to furnish, and had furnished, half of the requisite funds.

Afterwards, while the road was thus in the hands of, and was being operated by, the Government, the latter on said 27th day of August, 1890, by due act of Congress, granted unto James L. Cherry a concession bearing date on that day, wherein and whereby it was provided, amongst other things:

1. That under said concession said Cherry should have the exclusive right to construct and operate such road from Buenaventura to the City of Manizales, in the Department of Antioquia, a distance of about 300 miles; that said road should be built by way of Cali, in the Department (or State) of Cauca—Cali being about 160 kilometers east of Buenaventura; that said Cherry should also have a preferential exclusive right to construct and operate a like road to the deep navigable waters of the Atrato river, and a like right to construct a railroad from Cali to the Ecuador line, with a branch to Popayan, in Cauca, aforesaid. (See 1st Article of Concession, Vol. III., p. —.)

(1273) 2. In aid of this liberal grant, the Government declared the construction of the railway to be a work of public utility, and as such entitled to all the rights given by law to enterprises of that class (Concession, Art. 3).

3. For the purposes of the concession the road was divided into two sections, the first section to begin at Buenaventura and to end at Cali, a distance of about 160 kilometers (see Vol. I., pp. 100 and 102), and the second section to begin at Cali and to terminate at Manizales, a distance of about kilometers (see Vol. I., p.); and, in further aid of the grant, the Government guaranteed to the concessionary for eighteen years interest at the rate of 5 per cent. per annum on $38,000 gold for each kilometer of the first section lying between Cordova and Cali and at the rate of 4½ per cent. on the same amount for each kilometer of the second section of the road; such sum of $38,000 being a purely arbitrary amount agreed upon as a basis for subsidy purposes, and it being provided that such interest should be computed at the end of each year upon the average number of kilometers of road constructed and put in operation during said period of eighteen years, and that such interest might be paid in gold or its equivalent in any other money; but it was expressly provided that construction should be carried forward continuously from one of the termini of the road to the other, and that no interest should be paid by the Government for isolated portions of the road until such parts should be connected and opened for operation (Concession, Art. 7).

4. In further aid of the grant, the government also guaranteed interest at the rate of 5 per cent. per annum upon $8,000 (gold) per kilometer upon each kilometer of the road from Buenaventura to Cordova—a distance of 20 kilometers and 240 meters—for a period of eighteen years from the time of the termination of the work on the first section of the road; that is, (1274) from the time of the completion of the road to Cali. (See Art. of Concession.)

5. In further aid of the grant the Government secured

payment of said interest by pledging one-half of the gross revenues collected as duties on imports at its custom-houses on the Pacific, but reserved the right to issue drafts to the order of the concessionary, redeemable from such one-half of such duties. While it was provided that the interest due should be paid during the month of January in each year, the only effect of a delay in payment was to entitle the concessionary to payment of interest on delayed payments at the rate of 10 per cent. per annum on the amounts in arrears. (See Art. 10 of Concession.)

By reference to Articles 4, 5 and 10, it will be seen that delay in payment of interest was not to excuse the concessionary for failure to complete the road to Cali within the expressly stipulated "peremptory period of four years." (This is important and will be adverted to in the proper place.)

6. In further aid of the grant, the concessionary was given the right to substitute electricity or any other motive power for steam. (See Art. 11 of the Concession.)

7. In further aid of the grant, the Government agreed that all fixed plant, rolling stock, tools, dynamite, bridges, telegraph material, plates of galvanized material and mechanical apparatus for loading and unloading vessels, imported for the construction, operation or good service of the road and its appurtenances, should be exempt from import duties, and any other national, departmental or municipal taxes, and that the road, its accessories and appurtenances, should also be exempt from such taxation and any and every forced loan, exactions and contributions of war. (See Art. 16 of Concession.)

8. In further aid of the concession, it was provided that the right of way should be forty kilometers on each side of the (1275) line, and that no other railway should be constructed within such right of way during the term of the concession (70 years), except with the consent of the concessionary or his legal representatives. (See Art. 19 of Concession.)

9. In further aid of the concession, it was provided that the concessionary should have the preferential right to have adjudicated to him such mines or mineral deposits as should be discovered within the right of way granted, and such coal mines as were on Government lands within such right of way, with the right to use and dispose of such products free from national, departmental or municipal taxes. (See Art. 22 of Concession.)

10. In further aid of the grant, it was provided that the concessionary should have the preferential right to the adjudication of unappropriated lands within the limit of the right of way. (See Art. 23 of Concession.)

11. In further aid of the grant, it was provided that the

Concessionary should have the preferential right of construction of a railroad to connect the upper Magdalena river with the upper Cauca river, and for the construction of a railroad from the last of the lines mentioned in Article 1 of the Concession to the navigable waters of the Putumayo river within the territory of Colombia.

12. In further aid of the grant, the Government undertook, at its own expense, to furnish such police and military force as should be necessary for the preservation and safety of the persons and property of the company's employees and workmen during the continuance of the concession, and to such end constituted the employees of the company (except the peons) national police agents, exempting them, specially, from military and other forced service. (Concession, Art. 27.)

(1276) 13. In further aid of the grant, the Government agreed, out of its unappropriated lands, to furnish to the company, gratis, and to any extent that might be required for the road or its appurtenances, all such rights of way and lands as should be necessary for the road and its accessories. The Government also agreed to exercise the power of condemnation, or eminent domain, over all private lands required for the use of the road or its appurtenances, and secured to the company the right freely to take from the national lands all wood, stone and other materials of construction required for use on the railway. (Concession, Art. 28.)

14. In further aid of the grant, the Government threw open to the concessionary its archives of plans, gradings and estimates in connection with the railway covered by the concession. (Concession, Art. 29.)

15. In further aid of the grant, the Government gave to the concessionary the right to construct all necessary ports, wharves and landing places, and to that end granted the use, gratis, of all national lands requisite for construction or extension. It also gave the concessionary the right to establish necessary telegraph and telephone lines, and until the time of the completion of the railway, gave to the concessionary the right to use the national lines, without charge, in all matters relating to the railway. (Concession, Art. 30.)

16. In further aid of the grant, the Government gave to the concessionary the exclusive right, for the first five years of the concession, to fix all freight, passage and transportation rates, reserving the right, after five years, to act with the concessionary in fixing such rates, but providing that the rates should never be made lower than those in force at the date of

the grant, except with the consent of the concessionary. (Concession, Art. 32.)

17. In further aid of the grant, the Government assigned and transferred to the concessionary, gratuitously, and by way
(1277) of subsidy, during the period of the concession, the use of the then existing railway between the port of Buenaventura and Cordova, with all its fixed plant, rolling stock, buildings, utensils, tools, cuts, gradings, accessories and appurtenances, delivery to be made to the concessionary within fifteen days after the commencement of the formal work of construction of the line, and the length of constructed road received by the concessionary to be measured off and noted for the purposes provided in Article 8 of the Concession—that is, for the purpose of computing the guaranteed interest secured to the concessionary by that article. (Concesssion, Art. 33.)

18. In further aid of the grant, the Government agreed that, in case the concessionary should complete the first section of the road before the expiration of the date stipulated in Article 4 of the Concession—that is, "within the peremptory period of four years" from the date of the concession—then it, the Government, should deliver to him, as a premium, titles to unappropriated lands, open to adjudication in any part of the Republic, on the basis of one thousand hectares for each month of anticipation of the completion of the said first section. (Concession, Art. 38.)

19. The formal term of the life of the concession was fixed at seventy years from the date of approval by the President of the Republic; and the concession was not to be assigned to any foreign nation, though it might be assigned to an individual, company or corporation, on notice to the Republic. (Concession, Arts. 17 and 34.)

As consideration for the granting of the broad, liberal and exclusive privileges embodied in the concession, the Government exacted, and the concessionary, in order to secure such extensive privileges, bound himself absolutely to the following clear, specific and controlling conditions:

20*a*. The construction of the road should be commenced within four months from the date of the execution of the con-
(1278) cession and the first section thereof (from Cordova to Cali, a distance of K. 139, 760 m.) should "be completed and opened to traffic within the peremptory period of four years, counting from such date" (that is, from such date of execution) "except in case of fortuitous circumstances or *vis major*." After the beginning of the work, the same was to "be continued, without interruption, unless prevented by *vis major* or fortuitous circumstance, and save and except in case of delays occa-

sioned by the Government and unavoidable by the concessionary." (Concession, Art. 4.)

Failure under this article was ground of forfeiture. (Art. 39.)

It is to be noted that the only delay caused by the Government which could operate to excuse interruption in construction *was a delay that the concessionary could not obviate or avoid.*

It is also to be noted, that non-payment of interest by the Government was *not* to excuse delay of completion of the *first section* of the road, for while it is *specifically made an excuse* for delay in the completion of the *second* section of the road, it is nowhere made such excuse in respect of the completion of the *first* section. (Concession, Arts. 4, 5 and 10.)

21*a*. The final working plans for the line of the second section of the road, were to be made within six months from the time when it should be decided (mutually) to begin the construction of such section, and such construction was to be commenced within six months thereafter.

The construction of the second section, after having been commenced, was to be continued without interruption, and was to be completed within five years thereafter—except in case *ris major* or fortuitous circumstances should intervene and force the suspension thereof, or in case delay should be caused by the Government and be unavoidable by the concessionary. (Concession, Art. 5.)

It is to be noted, as above, that delay in payment of interest (1279) by the Government was to be deemed an unavoidable cause of delay of construction of the second section of the road, but not of the first section. (Concession, Arts. 4, 5 and 10.)

22*a*. It was expressly provided that the plans, profiles and maps of the line should be made in duplicate, and that one copy thereof should be forwarded to the Government through the Department of Public Works, and that the other copy should be kept in the company's office, at Cali; and it was also expressly provided that the official standard of measurements of the Republic should be used "in the plans and elsewhere, in everything relating to the enterprise." (Concession, Art 6.) Failure to comply with this article was ground of forfeiture. (Concession, Art. 39.)

It is to be noted that the Company, with the exception of the maps and profiles from Caballete K 30 to Catanga K 43, never forwarded any plans, profiles or maps to the Government, but merely delivered certain plans of the line at Buenaventura after the execution of the convention of January 4, 1897.

It is also to be noted that at least until May, 1892, the official standard of measurements of the Republic (which was the meter), was never used by the company, but that the stand-

ard of measurements used by it was the English foot. (See Testimony, Vol. I., p. 546.)

23*a*. In addition to the provision of the fourth article of the concession, that the first section of the road should be "completed and opened to traffic within the peremptory period of four years," it was also expressly provided that the work should be carried on, continuously, from one of the termini of the road to the other, and that no interest should be paid by the Government on isolated portions of the road until after they had been connected and opened for operation. It was also expressly provided that the guaranteed interest should be computed at the end of each year upon the average number of kilometers constructed and put in operation, and that it might be paid in gold or in the equivalent of gold in any other money—that is, in (1280) money which, at the time of payment, should be of the market value of the gold interest. (Concession, Art. 7.)

24*a*. It was also expressly provided that the Government was not to pay any interest or expenses on account of preliminary plans or final surveys of the line, and that construction track, side tracks and all other accessories required by the railway should be deemed included in the respective kilometers to which they were appurtenant, or, in other words, that such construction track, side tracks and accessories should not be measured for the purpose of ascertaining the number of kilometers upon which the guaranteed interest should be paid. (Concession, Art. 9.)

25*a*. The case of delay in interest payment by the Government was expressly considered, and it was carefully provided that the only effect of such delay should be to entitle the concessionary to interest at the rate of 10 % per annum on the arrears of interest, and to excuse him for failure of promptness in the construction of the second section of the road—that is, from Cali to Manizales. (Concession, Art. 10 and Arts. 4 and 5.)

It is to be noted that the Government and the concessionary made their own bargain as to the special and only effect of a delay in payment of the guaranteed interest (subsidy), and so limited such effect that such delay, besides entitling the concessionary to certain interest, was only to operate as an excuse for delay on the part of the concessionary in the construction of the second section of the road.

It is also to be noted that while the concessionary absolutely bound himself to complete the first section of the road—that reaching to Cali—he was only to begin the building of the second section—Cali to Manizales—after the completion of the first, and after he and the Government had mutually decided

that the necessities of traffic required such building. (Concession, Arts. 2, 4, 5.)

It is to be noted, also, that no attempt was ever made to construct the second section of the road, and that, therefore, no (1281) condition ever arose under which the concessionary or the company was entitled to invoke the aid of the provision of the concession in respect of the effect of delay in interest payment upon delay in construction. This effectually disposes of the company's preposterous contention that its default in construction was excused by delay in payment of interest by the Government.

It is to be noted, also, that the Government was never in actual default in respect of interest payments, but that it really paid interest in advance. (See *infra* Analysis of Interest Payments and Liquidations.)

26*a*. The Government especially reserved the right to issue bonds or drafts (*libranzas*) payable to the order of the concessionary and redeemable from one-half of the customs receipts of the Pacific ports of the Republic. (Concession, Art. 10.)

It is important to note this point, for it disposes of the company's objection that the Government issued *libranzas* in liquidation of the guaranteed interest to the loss of the company. The Government had the express right to pay in such *libranzas*. If it paid in money or funds of any other form, the amount paid would have to be equivalent to the interest in gold, and the concessionary had received the concession with these rights expressly reserved by the Government and acknowledged by himself. He knew of the constant fluctuations of exchange, and voluntarily assumed the risks thereof, and also took the risk that one-half of the customs receipts might not, at all times, be adequate to the redemption of the *libranzas* as rapidly as the latter might be issued. He also, voluntarily, and with full knowledge, assumed the risk that merchants and bankers might not at all times be prepared to offer satisfactory prices for the *libranzas*. These were voluntary risks on the part of the concessionary, and were some of the reservations insisted on by the Government, and assented to by him, as conditions of the granting of the multitudinous and extensive privileges of the concession.

(1282) There is no proof that the libranzas were ever refused at the custom-house, when offered within the terms of the concession; on the contrary, the fair inference is that they were not refused. (Testimony, Vol. I., p. 558.)

27*a*. It was expressly provided, in protection of the Government, in respect of the future usefulness and value of the road, that the latter should be one meter in width, for its entire length, and that it should be so constructed that a double track

might be laid, whenever such double track should become necessary. (Concession, Arts. 11 and 12.)

It is to be noted that the company defaulted upon both of the above provisions, and constructed a road of but three feet in width, with neither road-bed nor bridges adapted for the laying of a double track. (Testimony, Vol. I., pp. 546-7.)

28*a*. It was specifically provided that the Government should at all times have the right of examination of the construction work, the line and the accounts of the railway, and that in those respects the concessionary should facilitate the Government's agents as far as possible in the discharge of their duties in such examinations. It was also specifically provided that detailed reports of the results of the operation of the road, including all receipts and disbursements affecting its revenues, should be forwarded weekly to the Minister of Public Works for his examination and approval, and such reports were expressly declared to be necessary. (Concession, Art. 21.)

It is to be noted that such *weekly* reports were never sent in by the company, but that only half yearly reports were sent in, and that the company refused to allow the Government to inspect its accounts. (Testimony, Vol. I., pp. 128 to 142, 547.)

It is futile for the company to contend that it offered to allow the Government an inspection of its books in New York, for it, at the time of the demand, had books of accounts and (1283) accounts at Buenaventura and elsewhere in Colombia which it was bound, under the terms of the concession, to submit to the Government for examination. It is to be noted that the company approved of its agent's refusal to permit the examination. (Testimony, Vol. I., pp. 538-9.)

29*a*. As security to the Government that the concessionary would perform the obligations of the concession on his part, it was provided that he should deposit with the Government's agent in New York the sum of fifty thousand dollars in American gold, or the equivalent thereof in other money, before the 27th day of October, 1890, to be retained by the Government until the concessionary should have proven legally that he had "constructed a part of the road the value whereof" should "be equivalent to the sum of $200,000 in American gold." And it was further specifically agreed that, so long as said $50,000 should remain on deposit, the Government should have the right to freely dispose of the same, paying, in case of such disposal, semi-annual interest at the rate of 5 % per annum, and in case it should leave said sum on deposit, allowing to the concessionary whatever interest it should be allowed thereon. (Concession, Arts. 25 and 26.)

It is to be noted that, while neither the company nor the concessionary ever proved the construction of any road of the

value of $200,000, American gold, the Government actually repaid the deposit before any such sum had been expended on construction. The proofs show, clearly, that the deposit was repaid on April 2, 1892, and that road of the value of $200,000 gold had not been completed at that time. (Testimony, Vol. I., pp. 539-546.)

Indeed the company's chief engineer, Mr. Carter, says that said sum had not been expended on construction before the end of 1892. (See testimony, 539-546.) In point of fact the company had not expended $200,000 gold in construction work at the time of the repayment of the deposit. By calculating cost at the arbitrary, unwarranted and excessive rate of $38,000 (1284) gold per K., the company would have been able to claim an investment of $200,000, inclusive of 32¾ % for contingencies, by about May, 1892 (testimony, 539-546). From Mr. Schramme's testimony it appears that the company only claimed, in August, 1891, that the repayment of the deposit had come due, on the theory that it had constructed and opened to traffic a sufficient number of kilometers to amount to $200,000 gold, provided it were assumed, for the purposes of the calculation, that each kilometer must have been taken to cost $38,000 gold. Mr. Schramme, however, made two mistakes in this matter: (1) he assumed that the Company was entitled to credit for road that had been constructed by Mr. Cisneros, and (2) he assumed that the company was not bound, in order to become entitled to the repayment of the deposit, to expend $200,000 gold on new construction work, but that it had the right to take into account the arbitrary sum of $38,000 gold per kilometer, and to claim a return of the deposit upon the construction and opening to traffic of such number of kilometers as would, when multiplied by $38,000 gold, amount to $200,000 gold. (Testimony, .) Both of Mr. Schramme's positions were entirely untenable. Under the concession the company was bound to actually expend the $200,000 before it could reclaim the deposit. The $38,000 was merely an arbitrary sum used as the basis for the calculation of the subsidy, and had nothing to do with the provision of the concession which required the concessionary to expend $200,000 in construction work. In other words, the concessionary was absolutely bound to expend $200,000 gold in true new construction work before he could properly demand repayment of the deposit. It is clear that he must have been himself convinced of this fact when on March 7th, 1892, he entered into the agreement of that date with the Government whereby he left it to the decision of the Minister of Public Works to determine when the Government would be willing to return the deposit. It must be remembered that in all of Mr. Carter's (1285) estimates upon total cost of construction he has in-

cluded 32¾ % to cover contingencies. (Testimony, 347-8, 533.)

This disposes of the company's claim that the Government was in default in respect of the repayment of the deposit. This will be further referred to hereafter.

30*a*. It was specifically provided that the concessionary, and any persons to whom the concession might be assigned, should, in relation to the concession, be subject to the laws of the Republic, and that the rights and obligations springing from the concession should be interpreted exclusively by local judges and tribunals; but that in case the Government should, for any reason, declare the concession forfeited, the concessionary should have the right to submit the matter to the decision of two experts, one to be appointed by the Government, and the other by the concessionary, and that such experts should appoint an umpire to dispose of points in dispute, the decision of the arbitrators or of the umpire to be final and unappealable.

It was also provided that all questions or matter of difference arising between the Government and the concessionary, in relation to the concession, should, on application of either party, be decided by the Supreme Court of the Republic, except questions in relation to the forfeiture of the concession.

It was also declared to be the express condition of the concession that the concessionary should renounce, and that he did renounce, the initiation of any claim by diplomatic channel relative to the rights and obligations springing from the concession, except in case of denial of justice. (Concession, Art. 37.) Failure to observe any of the obligations of this article was ground of forfeiture (Art. 39).

It is to be noted that there is no proof either that the concessionary or his assigns demanded, or that the Government ever refused, arbitration; nor was any attempt ever made to obtain any redress or justice through the courts of Colombia; but, contrary to the provisions of Article 37 of the Concession, the concessionary initiated diplomatic proceedings when no (1286) denial of justice had occurred. The phrase "denial of justice" has a well-settled meaning, and, as used in the concession, could only apply to a case involving either a refusal by the courts to administer justice according to Colombian law, or a refusal by the Government, after it had formally forfeited the concession, to allow the right of forfeiture to be reviewed by arbitrators.

31*a*. It was further specifically and expressly provided that the concession should be forfeited in either of the following cases: (1) Whenever the concessionary should fail to comply with any of the obligations contracted by him in either Article 4, 6, 25, 34, 35 or 37; that is to say, if he should fail to complete the road to Cali "within the peremptory period of four

years" from the date of the execution of the concession, except he were prevented by *vis major* or fortuitous circumstance; or if, having commenced the work, he should discontinue the same, except the discontinuance were caused by *vis major* or by some act of the Government which could not be avoided by the concessionary; or if he should fail to make the plans, profiles and maps as provided in Article 4 of the Concession, or should fail to forward the duplicate copies thereof through the Department of Public Works, or to keep one set of such duplicates in the main office of the company at Cali; or if the official standard of measurements of the Republic—the meter—should not be used as provided in the 6th Article of the concession; or, if he should fail to deposit the $50,000 security, as provided by the 25th Article of the Concession; or, if the concession should be assigned to any government or foreign nation; or, if he should fix his residence elsewhere than at Bogota and yet not keep at said city an agent vested with sufficient authority to deal with the Government in everything relating to the concession; or, if he should initiate any claim through diplomatic channels relative to the rights or obligations springing from the concession, except in the case of denial of justice; or, in case work should be suspended or the exploitations should be abandoned for more (1287) than six consecutive months; but it was also provided that no forfeiture should be declared for defaults caused by *vis major* or fortuitous circumstances arising and duly proven (that is, proven before the arbitrators provided for). And it was further expressly provided and declared that in case of forfeiture of the concession, for any of the causes set forth, all work that should have been done should become the property of the nation, together with such sums as at the date of declaration of forfeiture should be on deposit as security on the part of the concessionary. (Concession, Art. 39.)

It is to be noted that absolute forfeiture of the concession was incurred by the happening of either of the following facts, amongst others: (1) If the concessionary failed to complete the road to Cali "within the peremptory period of four years," though not prevented by *vis major* or fortuitous circumstances; (2) if construction were commenced and then substantially discontinued, unless the discontinuance were caused by *vis major* or by some act of the Government which the concessionary could not avoid; (3) if the plans, profiles and maps, referred to in Article 4 of the Concession, were not made, forwarded or kept on file, as required by the provisions of that article; (4) if the official standard of measurements of the Republic were not used as required by Article 6 of the Concession; (5) if the company, contrary to the provisions and inhibitions of the 37th Article of the Concession, initiated through diplomatic channels (see Testimony, Vol. I., pp. 259 to 291) claims relative to the

rights and obligations springing from the concession. The company defaulted under the above-enumerated conditions.

"The Cauca Company."

The "Cauca Company," party claimant in this arbitration, was chartered under the laws of the State of *Virginia*, United States of America, by charter granted the 29th day of November, 1890.

(1288) Its charter is as follows:

Certificate of Incorporation.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, hereby certify that an agreement, duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the CAUCA COMPANY, for the purpose of establishing, conducting, constructing, operating and maintaining in the Republic of Colombia an institution for the following purposes:

To cause to be constructed and operated a steam railroad in the Republic of Colombia, from the port of Buenaventura, in the Department of Cauca, to the City of Cali, and with the right to extend the same to the City of Manizales, in the Department of Antioquia, and to such other points or places in the Republic of Colombia as this corporation may in the future decide, and as may be allowed to it by the said Republic of Colombia, and to operate and maintain the said extension, and also to operate and maintain any and all railroads which it may acquire in said Republic of Colombia.

To build, construct and maintain and operate all railroads, bridges, buildings and other public improvements and machinery necessary or proper for the construction, maintenance or operation of the said railroads; to build, own, lease and use all kinds of motive power, cars, barges, boats, and other means of transportation of passengers or property by water, rail or other means of carriage throughout the Republic of Colombia, and to furnish motive power, cars, barges, boats and other means of transportation of passengers or property by water, rail or other means of carriage throughout the Republic of Colombia, and to furnish motive power in connection therewith for manufac-

(1289) turing and commercial purposes, and to construct, maintain, use, lease, sell or rent all kinds of elevators, docks, piers and other convenient structures for carrying on commerce within said Republic of Colombia.

To construct and maintain lines of magnetic or electric

telegraph, telephones, lines of piping or tubing for the transportation of oils or other fluids in connection with or appertaining to or coincident with the operation and maintenance of said railroad.

To buy and purchase and use in every form allowable by the laws of the State of West Virginia, all real or personal property necessary for or proper in connection with the use of said railway or railways allowed by the Government of the country in which said railways are situated.

To purchase, lease, sell, mortgage, or rent or operate all mines of all kinds of materials, precious stones and jewels within the Republic of Colombia.

To make all contracts which the directors may deem advisable for the construction of the said lines of railway.

To do all acts, accept all concessions or assign the same, which may be granted to the said company by the Government of said Republic of Colombia, or by the Government of any department of said Republic of Colombia, or of any municipality, corporation or individual in said Republic of Colombia.

To mortgage for such sum as the directors may deem advisable or necessary, all its assets and property, real or personal, and all its rights, franchises, concessions, grants and privileges, and for such purpose to issue obligations of any description, secured by trust deed or mortgage or otherwise.

And to take all steps and to do all acts necessary to carry into full force and effect and operation, all such concessions, grants, rights and franchises.

Which corporation shall have its principal office or place of business in the city of New York, in the county of New York and State of New York, with a branch office as may be established from time to time elsewhere, and is to expire on the 24th (1290) day of November, in the year one thousand and nine hundred and forty (1940); and for the purpose of forming said corporation we have subscribed the sum of one hundred thousand ($100,000) dollars, and have paid in on said subscription the sum of ten thousand ($10,000) dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to five million ($5,000,000) dollars.

The capital so subscribed is divided into shares of one hundred ($100) dollars each, which are held by the undersigned respectively, as follows; that is to say:

Name.	Residence.	No. of Shares.
Robert W. Patterson	Brooklyn, N. Y.	200
Gustav Schipper	Plainfield, New Jersey	200
Charles Schipper	Plainfield, New Jersey	200
Sidney C. Schramme	New York City, N. Y.	200
George Russell	Brooklyn, N. Y.	200

And the capital to be hereafter sold is to be divided into shares of a like amount.

Given under our hands and seals this 24th day of November, 1890.

ROBERT W. PATTERSON. [SEAL]
SIDNEY C. SCHRAMME. [SEAL]
GEO. RUSSELL. [SEAL]
CHAS. SCHIPPER. [SEAL]
GUSTAV SCHIPPER. [SEAL]

Wherefore, the corporators named in the said agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the twenty-fourth day of November, nineteen hundred and forty, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great seal of the said State, at the city of Charleston, this twenty-ninth day of November, eighteen hundred and ninety.

WM. A. OHLEY,
Secretary of State.

[G. S.]

(1291)

STATE OF WEST VIRGINIA,
Office of the Secretary of State.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, hereby certify that the foregoing and annexed writing is a true and correct copy of the Certificate of Incorporation of the Cauca Company, a corporation created, formed and organized under the laws of this State, as appears from the Record of Corporations in my said office.

Given under my hand and the great seal of the said State, at the city of Charleston, this first day of December, 1890.

W. A. OHLEY,
Secretary of State.

[G. S.]

"The Colombian Construction and Improvement Company."

The "Colombian Construction and Improvement Company" was also chartered under the laws of the said State of West Virginia by charter granted the 29th day of November, 1890.

Certificate of Incorporation.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, hereby certify that an agreement, duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY for the purpose of establishing, conducting and maintaining in the Republic of Colombia, and in other parts of South and Central America, an institution for the following purposes:

To receive deposits of money, stocks, bonds, mortgages, deeds, wills and other securities and other kinds of valuable personal property and evidences thereof, from any state, body politic, municipal or other corporation, association or person, (1292) for the safekeeping thereof, and for this purpose to own real estate, to construct buildings and fire and burglar-proof rooms, vaults, safes and boxes for the deposit and safe-keeping of papers, securities, plate, jewels and other valuable personal property and for renting the use of the same.

The construction of railroads, bridges, buildings and all other public or private improvements, and the manufacturing, selling and dealing in machinery, appliances and materials used in the same.

The building, owning, leasing and using motive power, cars, barges, boats and all other means of transportation of passengers or property by water, rail or other means of carriage, and the furnishing of motive power for manufacturing and commercial purposes, together with all the elevators, docks, piers and other convenient structures for carrying on commerce.

For constructing and maintaining lines of magnetic or electric telegraph, telephones or lines of piping or tubing for the transportation of oils or other fluids, and carrying on the business properly pertaining to such improvements.

For purchasing, operating, maintaining, leasing or renting mines of all kinds of minerals, jewels and precious stones of all kinds.

For engaging in the purchase and sale of all articles or substances of value grown, indigenous, or capable of being produced in said territory, including all kinds of woods, barks, fibres and similar articles.

To obtain, own, hold, use, exploit and sell all concessions obtained from the government of any of the States of South and Central America, or from any other political body or corporation, necessary or useful in connection with any of the above purposes.

To manufacture any and all of the above metals and other articles, and the various products thereof.

To act as the fiscal or transfer or other agent or attorney, in fact, of any state, municipality, body politic, association or person within such territories, and in such capacity to receive and disburse money and transfer and register and countersign certificates of stock, bonds or other evidences of indebtedness, to purchase and sell stocks, bonds and other personal property

(1293) on commission, and do a general brokerage business, to buy and sell bills of exchange, emit letters of credit, to take, accept and execute all legal trusts and commissions in regard to the purchase, holding, management, sale and disposition of any estate or property, real or personal, and the rents, issues, profits and incomes thereof.

To act as agents for any and all persons, firms, companies, corporations (national, municipal or otherwise), for the purpose of loaning or investing money upon real estate or other securities, or for the payment of such loans, and to do any other lawful business which may be granted or confided to it by any such person, association, corporation or other legal authority. To charge such rents, fees or commissions as may be agreed upon, or as are just and reasonable for the services rendered.

To loan the funds belonging to the company or entrusted to it on security of real or personal estate, to discount notes and bills of exchange and receive interest or discount in advance, to receive funds or money on deposit and give certificate therefor.

To manufacture all articles of merchandise or traffic and construct buildings for said purposes and for all purposes connected with mining, shipping and transporting minerals or smelting and reducing the same, and to buy, sell and lease mineral or other mines as far as authorized by the laws of the State of West Virginia, together *will* all appliances and machinery necessary or proper for any of said purposes.

To buy, breed, pasture and deal in cattle, horses and other live stock, and to buy, own, sell and lease lands for agricultural and other purposes, and all water rights, range rights, mill rights, and other rights, franchises and privileges whatsoever, in so far as such rights do not conflict with the laws of the State of West Virginia.

To carry on the business of life, fire, marine, steam-boiler, plate-glass and other insurance, as well as the business of guaranteeing titles to real and personal property.

To mortgage for such sum of money as the directors may (1294) deem necessary or advisable, all the assets, real or personal, and all the rights, concessions, franchises and grants of such property.

To conduct the business of a mercantile agency, to obtain reports as to the financial standing of corporations, firms and individuals, and supplying such information to its customers.

To establish hotels and springs companies, gas works, electric-light plants, water works, building and loan associations, and transact all business pertaining to any of said branches.

For establishing agricultural and industrial societies in so far as the same do not conflict with the laws of the State of West Virginia.

Which corporation shall keep its principal office or place of business in the city of New York, in the county of New York and State of New York, and such other branch offices as may be established from time to time elsewhere, and is to expire on the 25th day of November, in the year one thousand, nine hundred and forty (1940), and for the purpose of forming said corporation we have subscribed the sum of one hundred and twenty thousand ($120,000) dollars to the capital thereof, and have paid in on said subscription the sum of sixty thousand ($60,000) dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to five million ($5,000,000) dollars in all.

The capital so subscribed is divided into shares of one hundred ($100) dollars each, which are held by the undersigned respectively, as follows—that is to say:

Name.	Residence.	No. of Shares.
Henry A. Richardson..	Brooklyn, N. Y.....	200
Robert W. Patterson..	Brooklyn, N. Y.....	100
Christian F. Schramme.	New York City.....	100
Elisha Dyer, Jr.....	New York City.....	200
Marcus Stine.....	New York City.....	250
Bruno R. Schroder....	New York City.....	100
William W. Wickes...	Brooklyn, N. Y.....	100
Stephen Marx.....	New York City.....	100
Charles Schipper.....	Plainfield, New Jersey.....	50

(1295) And the capital to be hereafter sold is to be divided into shares of a like amount.

Given under our hands and seals this 25th day of November, 1890.

HENRY A. RICHARDSON. [SEAL.]
ROBERT W. PATTERSON. [SEAL.]
CHRISTIAN F. SCHRAMME. [SEAL.]
ELISHA DYER, JR. [SEAL.]
MARCUS STINE. [SEAL.]
BRUNO R. SCHRODER. [SEAL.]
WILLIAM W. WICKES. [SEAL.]
STEPHEN MARX. [SEAL.]
CHARLES SCHIPPER. [SEAL.]

Wherefore, the corporators named in the said agreement and who signed the same, and their successors and assigns, are hereby declared to be from this date until the twenty-fifth day

of November, nineteen hundred and forty, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great seal of the said State at the city of Charleston, this twenty-ninth day of November, eighteen hundred and ninety.

[L. S.]

WM. A. OHLEY.
Secretary of State.

It is to be noted that the Cauca Company and the Colombian Construction and Improvement Company were severally organized to conduct a great variety of different enterprises; that the purposes of the companies were, in many respects, dissimilar; that the Cauca Company had a subscribed share capital of but $100,000, and had paid-up subscriptions of but $10,000, with the right to issue shares to the extent of $5,000,000, and that the Colombian Construction and Improvement Company had a subscribed share capital of but $120,000, with paid-up subscriptions of but $60,000, with the right to issue shares to the extent of $5,000,000.

(1296) There is no evidence that the Cauca Company ever had any greater paid-up capital or funds from any source than the $10,000 specified in its charter; nor is there any proof that said company ever built or attempted to build, construct or equip the or any part of the Cauca railway. The Cauca Company kept no books of account, and there is no proof that it ever expended any moneys for any purpose whatever. On the contrary, it appears that the company had no interest in the subject matter in controversy at the time of the execution of the convention under which this arbitration is proceeding, and that it has not since had any such interest. Before the date of the convention it had parted with all of its interest and property in connection with the concession. (Testimony, pp. 110 to 113, and following contract.)

Cherry-Cauca Co. Contract.

It appears that on the very day of its incorporation, in *Virginia*, the Cauca Company, by the following contract, executed in New York, and dated on that day, pretended to acquire the concession in question from the concessionary:

Contract.

This Agreement, made this 29th day of November, 1890, between James L. Cherry, of San Francisco, California, party of the first part, and the Cauca Company, a corporation duly organized under the laws of the State of West Virginia.

Witnesseth as follows:

That in consideration of mutual promises and agreements hereinafter contained, and of certain other valuable considerations moving from the parties hereto, unto each other, the parties have agreed as follows:

First. That said Cherry hereby assigns, sets over unto the party of the second part, all his right, title, interest and claim unto a certain contract entered into between him and the Government of the Republic of Colombia, known as Contract No. (1297) 20, of the 27th day of August, 1890, together with all the rights and privileges of said contract granted to said Cherry.

Second. And the party of the second part hereby expressly covenants and agrees to accept said contract above mentioned, and to perform faithfully all the duties and obligations thereunder to be performed or done by said Cherry and his assigns.

Third. And it is further agreed between the parties that all railroads for and on behalf of the party of the second part, together with all road-beds, stations, rolling stock, and all and every appurtenance of every kind whatsoever, to be used or employed in any way by the party of the second part, shall be constructed by the said James L. Cherry, or such corporation to whom he may assign this contract.

Fourth. And the party of the second part further agrees that in consideration of the building, provisioning and stocking of said railroads to be built for and in behalf of it, it will pay over unto said Cherry upon the completion of each kilometer of the railroad, in accordance with the terms and conditions embodied in said contract of August 27th, 1890, all the stock, bonds, and all other certificates of indebtedness or obligations issued by or in behalf of the said party of the second part; and the party of the second part, in consideration of the building, construction and equipment of its road by said Cherry or assigns, hereby further assigns, transfers, gives and grants unto said Cherry all the rights it owns or may own under Article I. of said contract with the Republic of Colombia also all rights and benefits accruing under Article VII.; all rights and benefits accruing under Article VIII.; also all rights and benefits accruing under Article X.; all rights and benefits accruing under Article XV.; also all rights and benefits accruing under Article XVI.; also all rights and benefits accruing under Article XXII.; also all rights and benefits accruing under Article XXIII.; also all rights and benefits accruing under Article XXIV.; also all right, title and interest that the party of the second part may have in the sum of fifty thousand dollars

(1298) ($50,000) mentioned in Article XXV., and all of the rights and benefits accruing from said fifty thousand dollars ($50,000) according to Article XXVI.; all rights and benefits under Article XXVIII.; all rights and benefits under Article XXIX.; all rights and benefits under Article XXX.; all rights and benefits under Article XXXIII.; all rights and benefits under Article XXXVII.; also all rights and benefits under Article XXXVIII.; and also all other rights, benefits and privileges derived or to be derived, directly or indirectly, from or under said concession or contract.

Fifth. And in further consideration of the above the said James L. Cherry hereby further agrees for himself or his assigns that he will construct, build and equip said road in full conformity to the obligations and limitations contained in said contract of August 27th, 1890, and will, at his own expense, or at that of his assigns, do all the work necessary to put said railroad into the condition necessary to safely and properly operate the same.

In witness whereof the parties hereto have hereunto set their hands and seal this 29th day of November, 1890.

CAUCA COMPANY,
[L. S.] By ROBERT W. PATTERSON, President.

GEORGE RUSSELL, Secretary.

JAMES L. CHERRY,
[L. S.] By D. CALMAN, Atty.

STATE OF NEW YORK,
City and County of New York, } ss:

I, Leo G. Rosenblatt, a notary public in and for the county and State aforesaid, hereby certify that on the 27th day of January, 1891, there appeared before me in my said county Robert W. Patterson, president of the Cauca Company; George Russell, secretary of the said Cauca Company, and David (1299) Calman, the attorney in fact of James L. Cherry, the said Patterson, Russell and Calman being the same persons who executed the foregoing instrument; the said Patterson and Russell on behalf of and for the Cauca Company and the said Calman in the name and on behalf of James L. Cherry, and each of them respectively acknowledged that he executed the same for and on behalf respectively of the corporation, and the person in whose name he so executed the same and acknowledged the same for himself and for and on behalf of such corporation and person respectively, and the said Robert W. Patterson, being first duly sworn, did depose and say that he is the president of the said company; that he resides in the city of ; that he knows the corporate

seal of said company, and that the seal affixed to the foregoing instrument is such corporate seal and was so affixed by order of the board of said company; and the said George Russell, being also first duly sworn, did depose and say that he is the secretary of said company; that he resides in the city of Brooklyn; that he knows the corporate seal of said company, and that the seal affixed to the foregoing instrument is such corporate seal, and was so affixed by order of said Board of Directors. And the said David Calman, being also first duly sworn, did depose and say that he is the attorney in fact of James L. Cherry, and that he executed the said instrument in the name of the said Cherry, and on his behalf, by virtue of the power of attorney in writing, duly executed and granted unto him, the said David Calman, by the said James L. Cherry, and that he, the said Calman, resides in the city of New York.

Given under my hand and official seal this 27th day of January, 1891.

LEO G. ROSENBLATT,
Notary Public,
New York County.

(1300)

STATE OF NEW YORK,
City and County of New York, } ss:

David Calman, being duly sworn, deposes and says: I am the person who executed the original of the within agreement as attorney for James L. Cherry, by virtue of power of attorney, executed to me by said Cherry on the 29th day of November, 1890, and I hereby certify that the within copy is a true, correct and perfect copy of the original agreement, so executed by me, as attorney for said James L. Cherry.

DAVID CALMAN.

Sworn to before me this 18th day of April, 1891.

GEORGE RUSSELL,
Notary Public,
Kings County.
[L. S.] Certificate filed in N. Y. Co.

STATE OF NEW YORK,
City and County of New York, } ss:

I, George Russell, a notary public, duly appointed according to the laws of the State of New York, and qualified to act in the counties of New York and Kings, do hereby certify that I have carefully compared the above copy of an agreement between James L. Cherry and the Cauca Company with the

original thereof, and that the same is in all respects a true, perfect and correct copy of said original.

In witness whereof, I have hereunto set my hand and official seal this eighteenth day of April, 1891.

[L. S.]

GEORGE RUSSELL,
Notary Public,
Kings County.
Certificate filed in N. Y. Co.

It must be noted, however, that the Cauca Company, by such agreement, never acquired anything but an instantaneous and merely colorable interest in said concession, since, by the (1301) identical contract by which the pretended sale to it was made, it renounced, in Cherry's favor, and surrendered to him the right to construct and equip the railway and expressly granted to him every other benefit, advantage and beneficial interest covered by or embodied in the concession. The company never having done any work of any kind, and never, apparently, having expended any part of its alleged paid-up capital of $10,000, there is no evidence that it ever had any other reason for its existence than a desire on the part of the concessionary for the creation of a body whose chief function should be to give to his speculative enterprise an appearance of corporate stability, and whose instantaneous, momentary and merely colorable interest in the concession should afford the semblance of a basis for the issue of bonds and other obligations and the assumption of burdens, the personal responsibility of himself for which formed no part of his purely selfish and money-making scheme. The enterprise seems to have been conceived and engineered wholly for the benefit of Cherry and his friend and co-adjutor, Mr. Christian F. Schramme (one of the honorable commissioners in arbitration), whose admirable powers of absorption and assimilation have enabled them to expropriate from the enterprise and utilize for their personal and private advantage $331,514.36, as against the total of $339,275.01, which, by the report of the expert, Mr. Barney, appears to have been involved in construction, equipment, repair and running operations of the railway.

Cherry-Colombian Construction and Improvement Co. Contract.

That the pretended transfer from the concessionary, Cherry, to the claimant in this proceeding (The Cauca Co.) was a mere bit of jugglery, and that the latter company has no interest whatever in this controversy is further apparent from the fact that on the same day on which Cherry, by a single instrument, went through the form of conveying the concession (1302) to the Cauca Company, but taking back to himself all

the beneficial rights of the concession, he entered into a contract with the hereinbefore mentioned Colombian Construction and Improvement Company, wherein and whereby he assigned to it all his rights under his above set forth contract with the Cauca Company (which embraced every right covered by the concession), reserving to himself the right of chief constructor and contractor for the construction of the road, and that the said Colombian Construction and Improvement Company assumed all the obligations of the assigned contract, agreeing to hold him, Cherry, harmless therefrom.

Contract.

This agreement, made this 29th day of November, 1890, between James L. Cherry, of San Francisco, California, party of the first part, and the Colombian Construction and Improvement Company, a corporation duly organized under the laws of the State of West Virginia.

Witnesseth as follows:

That in consideration of the agreement hereinafter set forth, and of other valuable considerations moving from the parties hereto, the parties hereto have agreed as follows:

First. That the said James L. Cherry hereby assigns, sets over and transfers unto said Colombian Construction and Improvement Company all his rights, title and interest in and to a certain contract entered into by him with the Cauca Company, bearing date the day of November, 1890.

Second. And the party of the second part agrees in consideration of the transfer of said contract, and all the benefits thereunder, that it will pay to said Cherry the sum of one million eight hundred and eighty thousand ($1,880,000) dollars in full paid stock of the said party of the second part, the Colombian Construction and Improvement Company; and also shall cause to be paid to said Cherry within four years from the date hereof, the sum of one hundred and thirty-five thousand dollars (1303) ($135,000) in cash, or the equivalent of said sum in bonds of said Cauca Company, at the option of said Cherry, said sum of money or bonds to be paid in the following manner, viz: Said Cherry shall receive, if he desires the cash, ten per cent. (10 %) of all the cash realized from the sale of such bonds from time to time up to said amount of one hundred and thirty-five thousand dollars ($135,000); if he elects to receive bonds, he shall receive ten per cent. (10 %) of all bonds issued, until the amount so received by him shall equal in value one hundred and thirty-five thousand dollars ($135,000) in cash, at the price at which said bonds are issued to the public, all of such cash or bonds to be paid fully within four years.

And it is further agreed that said Cherry shall be em-

ployed as chief constructor and contractor for the construction of said road, until said above-named sums are fully paid.

And in consideration of the above agreement, said Cherry further agrees to return to the company, for the benefit of its treasury, the sum of eight hundred thousand dollars ($800,000) of full paid stock of said Colombian Construction and Improvement Company.

Third. And said Colombian Construction and Improvement Company further agrees that in consideration of the above agreements it will assume all the duties and obligations incumbent upon said Cherry under said contract with said Cauca Company, and will hold him free and harmless from all loss and damage thereunder.

In witness whereof the parties hereto have hereunto set their hands and seals this 29th day of November, 1890.

COLOMBIAN CONSTRUCTION AND
IMPROVEMENT CO.,
By H. A. RICHARDSON,
President.
C. F. SCHRAMME,
Secretary and Treasurer.
JAMES L. CHERRY,
By D. CALMAN,
Atty.

(1304) NOTE.—This agreement was acknowledged in the presence of Leo G. Rosenblatt, Notary Public, on the 27th day of January, 1891, by David Calman.

It is to be noted that there is no proof that notice of the foregoing assignment was ever given to the Government, and as it, in effect, taken with the Cherry-Cauca Co. contract, amounts to an assignment of the concession, such notice was necessary under Article 34 of the Concession.

Colombian Construction and Improvement Co. Release to Republic of Colombia.

It having appeared on the record by the Cherry-Cauca Co. contract and the Cherry-Colombian Construction and Improvement Co. contract, above set forth, and by the testimony of Mr. Christian F. Schramme (see Testimony, Vol. I., pp. 110 to 113) that the Cauca Co. had no interest in the controversy, and there being no party to the record in whose favor any award herein could be made, counsel for the claimant caused to be prepared and offered in evidence the following release:

Know all men by these presents, that

Whereas, the undersigned corporation, as agent of the

Cauca Company, has constructed certain railroad extensions in the Republic of Colombia, under an agreement entitling it to receive in payment therefor all the stock and bonds of the said Cauca Company; and

Whereas, in settlement of the controversies between said last-mentioned company and the Government of the Republic of Colombia the railroad was surrendered to the Government, and an arbitration proceeding begun, which is now pending, for the determination of the amount expended in the work; and the said Government has promised to pay unto the Cauca Company the sum so determined;

Now, therefore, in consideration of the foregoing recitals, and of valuable consideration, the receipt whereof is hereby (1305) acknowledged, the said undersigned company has released, and do hereby release the Government of the Republic of Colombia from the obligation to pay it the proceeds or any part thereof of any award which may be made as the result of the aforesaid arbitration proceedings; and the said undersigned company hath released, and doth hereby release the said Cauca Company from any claim, demand or cause of action which at any time it may have or might or could have had by reason of the work done by this company for said Cauca Company as aforesaid, and from any claim or right on its part in or to the aforesaid award or to the proceeds thereof except such rights therein as it may have as owner of the stocks and bonds of the Cauca Company (it being the owner of said stocks and bonds); and the undersigned corporation doth hereby authorize the Government of the Republic of Colombia and all other person or persons whomsoever to pay the proceeds of the said award, if any, to the said Cauca Company, its officers or agents duly authorized to receive the same, without respect to any rights of the undersigned corporation, which immediately upon due payment to the said Cauca Company will execute such further releases or acquittances as said Government may demand.

The intention of this instrument is that due payment by the Colombian Government to the Cauca Company of the amount of the aforesaid award, if any, shall operate as a release of said Government from any obligation whatever to the undersigned corporation, which has been, or at any time may have been, or may or could be, claimed against said Government by or on behalf of said undersigned corporation.

In witness whereof, the said undersigned corporation hath caused these presents to be signed by its president, and its corporate seal to be hereunto affixed, the day of July, one thousand eight hundred and ninety-seven.

HENRY F. RICHARDSON,
President Colombian Construction & Improvement Co.

(1306)

STATE OF NEW YORK,
City and County of New York, } ss:

On this twelfth day of July, in the year one thousand eight hundred and ninety-seven, before me personally came Henry F. Richardson, to me known, and known to me to be the president of the corporation which executed the foregoing instrument, and he duly acknowledged to me that he executed the same on behalf of said corporation. And the said Henry F. Richardson, being by me duly sworn, deposed and said that he is the president of said company; that he resides in the city of , in the State of ; that he has executed by a resolution of the Board of Directors thereof; that he affixed the corporate seal of said corporation by like authority; that he knows such corporate seal, and that the seal affixed to said instrument is such corporate seal.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

HENRY F. RICHARDSON.

ELIZABETH COLEMAN,
Notary Public (67),
N. Y. County.

It is to be noted that the foregoing release is in no sense, and does not pretend to be, a conveyance, transfer or assignment of any right, interest, property or claim of any kind whatsoever. Therefore, it does not change in any way the effect or force of the fact that the Cauca Company has not only never expended any moneys in the enterprise in question, but has never had any interest in this controversy. That it owned nothing, and did nothing, is apparent from the fact that it never even opened a set of books of account. It must be noted that the Cauca Co., by its assignment to Cherry, not only assigned to him, by special enumeration, all of the property rights conferred by and embraced in the concession, but concluded its grant by assigning to him "also all other rights, benefits and (1307) privileges derived or to be derived, directly or indirectly, from or under said concession or contract." The company even specifically reassigned to Cherry its short-lived or instantaneous right to operate the road, and so, as the same document gave to it and took from it the right of operation, together with every other right involved in the concession, it is absolutely clear that it never really had any ownership of or interest in either the concession, the railway or the assets or property involved in the enterprise.

It is true that in the first part of the said Cherry-Cauca Co. contract (Article 4), the railroad is referred to as one which is to be built for the company, yet the subsequent parts of the

agreement constitute an absolute, unequivocal assignment to Cherry of every right under the concession, and so he is left the sole, exclusive and absolute owner of the right to build and equip the railway, the absolute and exclusive owner of the railway and its accessories at all stages of construction and equipment, and the sole and exclusive owner of the railway, and the right to operate or run the same after its construction and equipment shall have been completed. By this contract, the power, Cherry, that brought the company into existence, stripped it absolutely of any and every vestige of right in connection with the concession, but left it free to keep up its naked organization for the purpose of exploiting any other of the multifarious purposes of its charter.

The Cauca Company, therefore, never was the real party in interest in the controversy with the Government, and, had the facts been fully disclosed, the Government would, doubtless, have refused to accept that company as claimant in the arbitration.

Defaults on the Part of the Concessionary and His Assigns.

The concessionary and his assigns wholly failed to complete the first section of the railway "within the peremptory period of four years" fixed by Article 4 of the Concession. In (1308) deed, when the concessionary took over the franchise, and the then completed and partly completed railway, there remained of the total distance from Buenaventura to Cali, which was 160 kilometers, about 131 kilometers and 500 meters to be built, of which, to date, but 9 kilometers and 866 meters have been finished, leaving 121 kilometers and 630 meters yet to be constructed. Surely, there could be no better proof of gross default.

The concessionary and his assigns were also in default under the 6th Article of the Concession, which required that plans, profiles and maps of the line should be made in duplicate, that one copy of each such duplicate plan, profile and map should be forwarded to the Government through the Department of Public Works, and that the other duplicate copies should be kept in the main office of the company at Cali.

No such duplicates were ever sent to the Government, and neither the concessionary nor the company kept any such duplicates on file at Cali.

The only maps sent out to the Government were of that part of the road lying between Caballete and Catanga.

The concessionary and his assigns were also guilty of other defaults, which need not be mentioned in this immediate connection.

Invalid Extension.

The concessionary, having the full period of four years from August 27th, 1890—the date of the concession—within which to complete, equip and open the railway to traffic, realized ere the four years had more than half expired, that he could not complete the road within the said period, and on December 10, 1892, with about twenty-one months of the four years yet to run, obtained from the Executive a so-called but invalid and inoperative extension of time for construction, which extension was to run from October 18th, 1894, to October 18th, 1896. The so-called extension follows:

(1309)

[Invalid] Extension, with Authority to Import Chinese Laborers.

Entered into by Don Victor Mallarino, attorney of the Cauca Co., and reformatory of contract of 27th of August, 1890, in relation to the construction of a railroad from Buenaventura to Manizales.

José Manuel Goenaga, Minister of Public Works, duly authorized for this purpose by his Excellency the Vice-President of the Republic, charged with the executive power on behalf of the Government, party of the first part, and Victor Mallarino, in his capacity as attorney for the Cauca ~~Co.~~ party of the second part, have entered into the following agreement:

Art. First. The Government, in view of the authority conferred by Art. First of Law 64 of the present year, concedes permission to the Cauca Company for the introduction into the country up to 3,000 Chinese laborers, who shall be destined only and exclusively to the works of said railroad.

Art. Second. Mallarino, in the name of the company, agrees to cause the said laborers, of which the preceding article treats, to leave the country as soon as the Government so orders after the termination of the work of the said railroad, and after the contracts which the company may have entered into with said laborers for such work have expired. Mallarino shall give notice of any contracts made under this article to the Government.

Art. Third. The Government agrees to extend for two years the time granted for the completion and giving over to the traffic of the line of the railroad from Buenaventura to Cali, said extension to count from the 18th of October, 1894, to the 18th of October, 1896.

Art. Fourth. This contract to become effective requires only the approbation of His Excellency the Vice-President of the Republic charged with the executive power.

(1310) In witness whereof two copies of the same tenor have been signed in Bogota on the 10th of December, 1892.

(Signed) JOSE MANUEL GOENAGA,
VICTOR MALLARINO.

Executive Government, Bogota, Dec. 11, 1892.
Approved,
M. A. CARO,
The Minister of Public Works.
JOSE MANUEL GOENAGA.

But the Executive had no power to grant any such extension. The concession had been granted by the Congress of the Republic, and such Congress alone had power to extend or modify its terms.

As the concessionary had obtained his concession from the Congress, he must have known that he could apply for relief only to that body. It will also be noted that although he must have known that Congress was in session in the autumn of 1892, and would only again assemble after two years recess, he did not apply to that body, but awaited its adjournment and then made application to the Executive, who had no lawful power to vary or modify the concession.

The so-called extension, then, had no validity. It is worthy of note that even the invalid pretended extension was obtained by the fraudulent pretext that the concessionary was desirous of introducing three thousand Chinese laborers to work upon the railway. When once the so-called extension was signed by the Executive no more was heard of the Chinamen, and there is no pretence that the concessionary or his assigns ever attempted to carry out the implied promise upon which the favor of the Executive was obtained.

On the contrary, the internal evidence of bad faith on the part of the concessionary is conclusive. In order to obtain the Executive signature to the so-called extension, hoping thus to so compromise the Executive that the latter would exert his influence with Congress to avert the forfeiture which was already looming up in the distance, the concessionary asked for (1311) liberty to import 3,000 Chinamen to work upon the road. This request was not only an implied promise to import the men and push the work, but that it was also an admission that 3,000 men would be needed is quite in accordance with the facts for, by recalling the estimate of Mr. Cisneros it will be seen that the latter engineer, after long experience in Colombia railroad building, gave it as his opinion that at least 1,000 men, well organized, would have been needed from the start. When the implied promise to import the 3,000 Chinamen was made the company's organization was weak and ineffective, and nearly

half of the four years had practically gone to waste. Under the circumstances, a decent regard for appearances, to say nothing of good faith, required the manifestation, at least, of a desire to go ahead with the work of construction. The concessionary immediately on obtaining the Executive signature to the invalid extension—which was a shrewd plan of the concessionary to compromise the Government—instead of increasing the force decreased it with great celerity. In this connection it is instructive to note that Mr. Carter's estimate of the average number of men employed on construction is in close accord with the averages taken from the company's pay-rolls. (See Testimony, pp. 311 to 333, and pay-rolls.)

The bad faith of the concessionary, and the real intent with which the application for permission to import 3,000 additional laborers was made—that is, to secure the signature of the Executive to something that might appear to compromise the Government on the question of forfeiture—will be made very apparent by a proper consideration and appreciation of the fact, established by the pay-rolls of the company, that the company in 1891 employed an average of but 172 men, that in 1892 it only employed an average of 234 men, and that in 1893 it only employed an average of 72 men. In direct connection with this, it must be noted that the number of men employed in 1892 increased until the month of December; that on the 10th day of December, 1892, the so-called extension was obtained, and (1312) thereafter the number of men employed was soon and so rapidly decreased that the total average for the year 1891 was but 72. It must be very carefully borne in mind that, while the so-called extension was obtained in December, 1892, the Congressional Declaration of forfeiture was not made until November 16th, 1894, which was almost two full years after the obtention of the invalid so-called extension. As the concessionary, instead of importing the Chinamen or putting on additional force, rapidly decreased the number of men on construction work, as soon as the Executive signature had been obtained, it is quite apparent that in getting such signature he was actuated by some other motive than a desire to increase the construction force. This motive, undoubtedly, was to promote complications under cover of which the concessionary might attempt to escape the forfeiture which he must surely have known would, in the absence of grounds of dispute, become inevitable. The awaiting the adjournment of Congress and the obtaining of the so-called extension had a motive, and the means employed to avoid or lessen the loss of forfeiture were shrewd indeed. Facts speak for themselves, and here we have, as early as December, 1892, a state of affairs not brought about by any act of the Government, showing clearly the inability of the concessionary to complete the road within the

time provided in the concession. That he never intended to go on with the enterprise in good faith is most apparent, for, though he succeeded in obtaining the compromising and complicating signature which was so desirable, he never thereafter made any attempt to increase his working force, but, instead thereof, at once proceeded to reduce such force and take in and hold the revenue of the road. In other words, foreseeing the approaching storm, he shrewdly prepared to escape with as little damage and as much salvage as possible. Men never act seriously without a motive, and the only rational explanation of the awaiting the adjournment of Congress, the obtention of the complicating signature of the Executive, the pretence of a desire to import (1313) 3,000 laborers, the decrease of force after the signature had been obtained, and the general stoppage of active work, is that the company's managers knew that they would be unable to perform the contract and were desirous of so complicating matters that if Congress, at its next session (which would cover and include the date of the expiration of the four years in which the road was to be constructed), should refuse to grant relief or declare forfeiture, a claim could be made that an extension had been granted and so a foundation laid for dispute which might lead to a compromise. On no other theory is it possible to account for the concessionary's conduct, especially the execution of the so-called extension.

Pending the Congressional recess, no new moneys were invested, but the construction work had to get along on what could be saved out of the revenue by withholding proper repairs. When Congress finally met and took action to bring up and dispose of the question of forfeiture the managers of the company promptly began to prepare for the worst. After this moneys were withdrawn by the managers as rapidly as possible.

The concessionary's default being gross and the pretended Executive extension being wholly inoperative, the Congress, in its next session, on November 16th, 1894, seeing that more than the "peremptory period of four years" had expired, and that the work of construction, at the rate of progression that the concessionary had maintained, would take some forty years for completion, passed Law 60 of said date, declaring that the Government should proceed to adjudge the concession lapsed. It is to be noted that the same Executive who, in a spirit of ineffectual kindness, signed the inoperative, so-called extension, approved the law of cancellation and directed that it be published and put into effect. The following is the law:

(1314) **Law 60.**

(16 November, 1894,)

by which a contract is disproved and an authorization is given.

THE CONGRESS OF COLOMBIA DECREES.

Article First. The Government will proceed to decree lapsed the contract of 27th of August, 1890, referring to construction of the railroad from Buenaventura to Manizales, inasmuch as Congress does not approve of the contract 98 of 1892, carried out between the Minister of Public Works and Mr. Victor Mallarino, general representative of the Cauca Railroad Company, which deals with the extension of time for the construction of the said railroad.

Article Second. The Government is hereby authorized to continue the construction of this railroad by administration or by a contract which shall be submitted to the approval of Congress.

Article Third. The 50 % of the products of the customhouse of Buenaventura and Tumaco shall continue to be used for the purpose of finishing the railroad from the port of Buenaventura to the town of Cali in accordance with Article 10 of Contract of 18th of October, 1890.

Dated at Bogota 16th of November, 1894.

President of the Senate, Antonio Roldan; President of the House of Representatives, Narciso Garcia Medina; Secretary of the Senate, Camillo Sanchez; Secretary of House of Representatives, Miguel A. Peñaredonda.

Executive Government. Bogota, November 16th, 1894. This decree is hereby ordered to be published and put into effect. (L. S.) M. A. Caro. The Minister of the Treasury in charge of Office of Public Works.

MIGUEL ABADIA MENDEZ.

(1315) Under the urgency of the concessionary the Executive delayed action to enforce the cancellation of the concession and no such action was taken until October 16th, 1895, when a decree was made declaring the concession at an end. It is to be noted that this decree was lawful and made under the direction of the Congress, and that the facts justified the forfeiture proclaimed.

Resolution of Suspension of Resolution of October 16, 1895.

At this state of affairs the concessionary induced the United States Government to intervene, and it did so through its Minister at Bogota. Such intervention proceeded upon

ex parte statements to the effect that the Republic contemplated a denial of justice to the concessionary. There was no such intention, and there is no evidence in this proceeding that the Government in any respect acted otherwise than within the law, and with strict regard to the provisions of the concession. In a friendly spirit, however, the Executive of the Republic authorized a temporary suspension of the decree of forfeiture. The resolution of suspension was as follows:

Resolution passed on the 23d of January, 1896, relating to the railway from Buenaventura to Manizales.

Treasury Department, Bogota, January 23d, 1896.

Whereas, Mr. James L. Cherry, duly authorized as attorney for "The Cauca Company," as it appears from a power of attorney granted by said company in the city, county and State of New York, United States of America, on the 23d day of October, 1895, before Mr. Julio C. Ponce de Leon, notary public of the said city and county, an authenticated copy of which power has been presented at this department, wherein Mr. (1316) Cherry informs this department that he is willing to make a friendly agreement as a representative of aforesaid company for the purpose of arriving at a decision in the pending controversies between the Government and the said "Cauca Company," relating to the fulfillment of the obligations agreed upon by both parties in accordance with the contract made on the 27th day of August, 1890, concerning the construction of a railroad from Buenaventura to Manizales, an agreement which, while possibly beneficial to both parties, yet cannot be immediately carried out because the Government lacks power to act on the matter; therefore, it is

Resolved, 1. To declare suspended the effects of the resolution passed on the 16th day of October, 1895, wherein is declared lapsed the contract of 27th August of 1890, relating to the construction of a railroad from Buenaventura to Manizales, until the next Congress shall decide whether or not it will authorize the Government to enter into a friendly agreement with "The Cauca Company."

If Congress does not authorize such an agreement, or "The Cauca Company" does not accept the basis which Congress may mark out to the Government for the company's concurrence, the constitution of the Tribunal of Arbitration shall be proceeded with in conformity with Article 37 of the aforesaid contract, each party being free to take all the time that may be necessary for the establishment of said tribunal.

2. Meantime both parties shall continue to fulfill the obligations of said contract. The guaranty of interests, corresponding to the year 1895, shall be paid in accordance with the liqui-

dation made in this department in view of the documents that the case may require.

3. It is understood that the suspension of the effects of the lapse referred to, which suspension has for object the procuring of a friendly settlement of the differences existing in the fulfillment of the contract with the intervention of Congress, does not argue either in favor or against any of the parties nor (1317) affect the rights that each of them may in due time claim before the Court of Arbitration.

Be this resolution communicated to the attorney of "The Cauca Company," so that if he accepts this agreement he shall sign the acceptance thereof, and the same is hereby ordered to be published.

The Sub-Secretary, in charge of the Department,

JUSTINIANO CANON.

Bogota, January 23d, 1896.

I accept in all its parts the above resolution.

The Attorney of "The Cauca Company."

JAMES L. CHERRY.

It is to be noted that the resolution of suspension was adopted for the purpose of allowing matters to remain in *statu quo* until Congress should have decided whether or not it would authorize the Government to enter into a friendly agreement with the Cauca Company; and, in the event of a refusal by the Congress to authorize such contract or the non-acceptance by the company of such terms as the Congress should fix, to provide for an arbitration under Article 37 of the Concession. It is to be noted, also, that the resolution of suspension was to have no prejudicial effect upon the rights of either party.

With respect to the right of arbitration under said 37th Article of the Concession, it is to be observed that such right could not spring into existence until *after a declaration of forfeiture had been made by the Government.* Such declaration was an absolute condition precedent to the right of arbitration. Hence, such declaration itself could not possibly be a ground for any claim that justice had been denied. The parties to the concession themselves provided the only method of procedure to obtain an adjudication upon the rightfulness of a declaration of forfeiture, and that method was a trial before the Court of Arbitration provided for in the said 37th Article of the Concession; but it is patent that no such adjudication could possibly be had until after the Government had declared a forfeiture. (1318) Of course, there could be no valid claim that the mere taking of a step which was a necessary preliminary to the adjudication of the Government's right of forfeiture could, in itself, be deemed a denial of justice. Had the Government declared

the concession forfeited, and had it then, after due demand by the concessionary or his assigns, refused to arbitrate, a different question would have arisen. But there is no proof either that the concessionary or his assigns ever demanded, or that the Government ever refused arbitration under the 37th Article of the Concession, nor, indeed, is there any proof whatever in any part of claimant's case that the Government ever defaulted under any provision of the concession.

It must be noted, further, that, by the said 37th Article of the Concession, it was expressly provided that all questions affecting the rights of the parties under the concession should be governed by Colombian law, and adjudicated exclusively by the Colombian courts, with the single exception that the right to forfeit should be adjudicated by arbitrators.

By the very terms of the concession, there could be no diplomatic intervention, except after a denial of justice, and no argument is needed to support the proposition that no claim of denial of justice could be predicated upon the fact that the Government had expressed its opinion that forfeiture had been incurred.

A declaration of forfeiture until either accepted by the concessionary or, if opposed, sustained in arbitration, could only operate as the declaration of a claim.

It was for the Government to decide when it should claim that forfeiture had been incurred, and it could only formulate and express that claim (and so lay the groundwork for arbitration thereon) in and by a formal declaration, which, under the 37th Article of the Concession, could, in effect, amount to nothing more than the assertion of a claim, the rightfulness of which was to be determined in a trial before arbitrators. The said 37th Article clearly contemplated the possibility of a claim that forfeiture had been incurred, and the article itself provided for the creation of a tribunal which alone (1319) should have power to adjudicate such claim. It is apparent that in any given case the rightfulness of the claim might be disputable, and it is equally clear that the Government could only lay a foundation for the arbitration of such claim by formally declaring the concession forfeited. The Government, then, having the right to assert the claim, such assertion could not be held to be a denial of justice. To justify a claim that justice had been denied him in the matter of forfeiture of the concession, and that therefore he had the right to initiate diplomatic proceedings or seek diplomatic intervention, the concessionary would have to show that the Government had not only declared the concession forfeited, but that it had refused to arbitrate the rightfulness of the forfeiture.

As there is no proof that arbitration was refused by the Government, and as the initiation of diplomatic intervention

was a ground of forfeiture of the concession (Concession, Art. 39), it follows that the United States intervened hastily and without right, and that the concession became forfeitable because of the concessionary's initiation of such diplomatic intervention.

The Government overlooked this last ground of forfeiture, and, in friendly deference to the desire of the United States, expressed through its Minister at Bogota, consented to receive and consider proposals looking to the amicable surrender of the concession The nature of the proposals is disclosed in the testimony of Mr. McKinney, Minister, &c. (Testimony, Vol. I., pp. 259 to 292.)

After considerable negotiation, a settlement by arbitration was agreed upon. *It is to be noted that the arbitration agreed on was not an arbitration under the 37th Article of the Concession.* An arbitration under that article could not dispose of any question except the question whether or not there was just ground for forfeiture.

It is to be noted, also, that the American Minister did not negotiate the final terms of adjustment by arbitration, but left (1320) that to be done by Mr. Schramme. (Vol. I., pp. 270 to 275.)

It is to be further noted that the Minister did not consider himself responsible for the terms of the final adjustment. Those terms were accepted by Mr. Schramme, and differed from the proposals submitted by the Minister. (Testimony, pp. 274 to 283.)

Finally, the following preliminary agreement upon a basis of settlement was arrived at:

Basis of Agreement.

The Government of Colombia and the concessionary company of the Cauca railway (The Cauca Company) agree to transact and conclude all differences that have arisen regarding the contract approved by Law 16 of 1890; the company delivering over to the Government the railway with all its fixed and rolling stock, buildings and other belongings, in virtue of a just indemnity in accordance with the stipulations set forth in the following articles:

2. Both parties agree beforehand to consider as a just indemnity an amount equivalent to what the company shall prove to have expended on the work done by them on the construction of the said railroad.

3. For the purpose of valuing such construction work and fixing the corresponding indemnity, both parties agree to the formation of an expert commission, composed of three members, who shall be appointed in the following manner: One by the

Minister of State of Colombia, one by Mr. James L. Cherry as representative of the company, and a third, in joint accord, by the Secretary of State of the United States of America and the Minister of Colombia in Washington.

4. The commission shall examine in the city of New York the books and accounts of the company, it shall inspect on the spot the railway works for the purpose of making the checks and confrontations that it may deem necessary, it may refer to witnesses and experts and call for documents, and shall fix a time for the hearing of both parties and for the presentation of (1321) such statements, vouchers and information that said parties may wish to present before the commission, and that may refer to the matter submitted for their consideration.

5. The commission shall dispose of a period of one hundred and fifty (150) days wherein to issue its decision, and for the purpose it shall hold its meeting where it may so desire it.

6. Should any member refuse to accept, or resign his post, or cease to act from any other motive whatsoever the proceedings shall not be suspended on this account, but the commission shall be completed by a new nomination within thirty days on the part of the party who nominated the member of the commission who shall have failed to act. If said party should not carry out his obligation, the Secretary of State of the United States of America and the Minister of Colombia in Washington shall proceed, in joint accord, to nominate some one to fill the vacancy.

7. The commission shall fix the amount of the indemnity and, further, the mode of payment, and terms in which the same shall be paid by the Government of Colombia to Mr. James L. Cherry, representative of the Cauca Company, or his authorized representative.

8. The decision of the commission shall be definite and unappealable. The Government of Colombia binds itself to pay the indemnity in the form and on the terms that the commission may decide, and the concessionary in virtue of the payment of the said indemnity, shall deliver *in integrum* the railroad to the Government. Both of these stipulations having been fulfilled, both parties shall remain in peace on all accounts, all differences that may have arisen shall be considered as settled, and all rights and obligations that may emanate under contract of 1890 shall be cancelled.

9. The Government of Colombia, calculating, approximately, that the concessionary has invested in the works a sum of about two hundred thousand dollars ($200,000) (although the concessionary considers this sum as much below the just (1322) price of the work done by the company), and with a view of obtaining the immediate delivery of the railroad, in accordance with Article 1st of Law 41 of the 20th of October,

1896, shall advance, should they deem it desirable, the above-mentioned amount on account of the indemnity.

The concessionary, on receipt of the above-mentioned amount, shall proceed to immediately deliver the railroad, together with all the fixed and rolling stock, buildings, tools and other belongings, in accordance with the above-mentioned legal disposition.

If the Government of Colombia shall make the aforesaid payment in advance, and if the concessionary should deliver the railroad, the said Government is bound to pay the balance in drafts on the custom-house, admissable for payment to the extent of 50 % of the import duties of the custom-houses of Buenaventura and Tumaco, always allowing that the expert commission shall fix an indemnity in excess of the amount mentioned above.

Bogota, 27th of November, 1896.

Accepted for the President of the Republic:

The Minister of Gobierno,

ANTONIO ROLDAN.

The representative of " The Cauca Company,"

J. L. CHERRY.

Approved:

C. F. SCHRAMME.

It is to be noted, very particularly, that the object of the Basis of Agreement was to authorize the final settlement of all differences arising out of the concession. It is also to be observed that the agreement, carefully and with great particularity, set forth the very terms upon which such settlement should be made, which were as follows:

(1) The railway, with all of its belongings, was to be delivered up to the Government.

(2) The concessionary company was to receive a "just indemnity."

(1323) (3) The "just indemnity" was to be measured by the stipulations of the agreement.

(4) The parties agreed to consider that indemnity "just" which should equal the sum which the company should "prove to have expended on the work done by them on the construction of the said railroad." It is worthy of note that, while all "fixed and rolling stock, buildings and other belongings" were to be delivered up, the settlement was considered "just," although the indemnity was to be confined to expenditures "on the construction of the said railroad."

(5) This "just indemnity" was to "correspond" to the value of the "construction work," and the work of "valuing such

construction work" was to be done by a commission of experts, which commission was required to "examine" the books and accounts of the company and to " inspect" the "railway works" "on the spot." The commission was to have the right to "refer to witnesses and experts and call for documents."

(6) The guide or rule for ascertaining the "just indemnity" having been specifically prescribed, the commission of experts was to be required to fix such indemnity and the "mode" and "terms" of payment. Of course, in measuring the magnitude of the indemnity the experts were to remember that the parties themselves had agreed upon what standard of measurement should be used and considered "just," and they were to remember that they were appointed for the sole "purpose of valuing such construction work and fixing the corresponding indemnity." The commission could have no power to alter the standard of measurement nor any right to depart therefrom because of any notion that its application would not result in the ascertainment of a "just indemnity." The commission was to be a "valuing body," charged with the duty of "valuing such construction work and fixing the corresponding indemnity"—that (1324) is, an indemnity equal to the value of the "construction work" (Basis, Art. 3), and was neither to be responsible for the nature of the bargain which the parties had made, nor empowered to modify such bargain or compromise any right thereunder.

(7) It was claimed by the Government that the concessionary had invested in the works a sum of about $200,000 (although the concessionary claimed that such sum was much below the just price of the work), and it was provided that, upon payment of such sum, the road, its fixed and rolling stock, buildings, tools, &c., should be delivered to the Government, and that the commission should determine whether or not any balance remained unpaid on the indemnity.

Although the final convention (by which all controversies between the parties were settled and which will be examined below) will be found clear and unambiguous and so not in need of aid from any other document in respect of its intent, yet as such convention and aforegoing bases of agreement are *in pari materia* it may be useful to make special note of two of the separate articles of such Bases of Agreement. By the second article of the bases it is very clear that the parties intended to confine the indemnity to an amount equivalent to what the company should be able to prove that it had expended specially upon actual construction work, and it is also clear that they had in mind not a general indemnity but a special and limited indemnity. This is evident from the phraseology of the article, for the parties say expressly that they "agree beforehand to consider as a just indemnity an amount equivalent to what the com-

pany shall prove to have expended on the work done by them (the company) on the construction of the said railroad." Had the parties intended to provide for a general indemnity, there would have been no occasion for saying that the particular indemnity specified should be deemed beforehand to be a just one. On the contrary, had the parties intended to provide for a gen-
(1325) eral indemnity, they would have used language appropriate to convey that intent, or, had they intended to provide for the repayment of any sums not expended in the direct work of construction, they would not have declared that the amount of the indemnity should be equivalent to what the company should prove that it had expended in construction, but would have specified the classes of expenditures intended to be repaid. This intent becomes even more clear when consideration is given to the ninth article of the bases, in which it is stated that the Government calculates approximately that the concessionary has invested in "*la obra*" (the work of construction) a sum of about $200,000. In using the words *the* work, it is evident that the parties referred to the work which had already been mentioned in the agreement, which was construction work. It is very important also to note the parenthetical statement, which immediately follows the foregoing provisions. "Although the concessionary considers this sum as much below, '*el justo precio de los trabajos por ella ejecutados*' (the just price of the work executed by it)." The use of the word price here is extremely significant, and indicates clearly an intent to refer to something which the Government is about to purchase. One would never think of referring to price of travelling expenses, office rents, salaries or like matters. It appears, then, that by Article Second the parties intended to agree specially that a particular and limited indemnity should be considered "just," for the occasion, and that by Article Ninth it was intended to say that the Government approximately fixed the concessionary's investment in the construction work at $200,000, while the concessionary claimed that such sum was much below the just *price* of the executed work.

Convention.

After the execution of the above preliminary Basis of Agreement, the parties executed the final convention under which the present arbitration is proceeding.
(1326) The following English translations of the convention were before the commissioners:

Sworn translation by Mr. Emmett R. Olcott:

The Cauca Railway.

Agreement for the settlement of the differences existing between the Government and "The Cauca Company" in con-

nection with the contract for the construction of the Cauca railway, January 4th, 1897.

The undersigned, that is to say, Manuel Esguerra, acting as Secretary of the Treasury, authorized by His Excellency the Vice-President of the Republic, acting as the Executive, hereinafter designated "The Government of Colombia," of the one part, and James L. Cherry, acting as general manager, agent and attorney in fact of "The Cauca Company," organized in New York to construct the Cauca railway, hereinafter designated as "The Cauca Company," of the other part, in conformity with the bases of the agreement stipulated on the 27th day of November, 1896, between the Government of Colombia and Cherry, acting as aforesaid, bases consented under the provisions of Article 1 of Law 41 of the year 1896, and under the general power of attorney made to Cherry by the president of "The Cauca Company" before Mr. José L. Morales, notary public of the city of New York, on the 31st day of December, 1890, and under the special power of attorney made also to the said Cherry by the president of "The Cauca Company" on the 23d day of October, 1895, before Mr. Julio C. Ponce de Leon, notary public of the city of New York, have entered into the following agreement:

Article I. The Government of Colombia and the company compromise and declare settled all pending differences between both parties in connection with the contract, approved by Law 16 of the year 1890, "regarding the construction of a railway from Buenaventura to Manizales," by means of the stipulations set forth in the following articles:

(1327) Article II. The company surrenders absolutely the concession to which Article I. of the contract approved by Law 16 of the year 1890 relates, and within fifteen days the next following the day on which this agreement shall be approved, shall deliver to the Government of Colombia the Cauca railway with all its fixed plant, rolling stock on hand, works, buildings, tools, utensils of all kinds, appurtenances, etc. In consideration therefor the Government of Colombia is to pay to the company a just indemnity for all the works constructed by the company during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the company for use on the railway, and which are now in existence.

Article III. The Government of Colombia and the company accept in advance as a just and only indemnity a sum which shall be the equivalent of what the company shall prove it has expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., etc., imported for use on such railway.

Article IV. In order to determine the indemnity to which the foregoing articles relate the Government of Colombia and

the company agree to constitute a special commission, to be composed of three (3) members who are to be named in the following manner: One by the Secretary of the Treasury of Colombia, another by the attorney in fact of "The Cauca Company," and the third to be agreed upon by the Secretary of State of the United States of America and the Minister of Colombia at Washington.

Article V. The Government of Colombia and the company hereby authorize the commission to be constituted in the manner hereinbefore indicated to fix the indemnity already mentioned, and such commission shall appraise the structures, works and materials referred to.

For such purpose, and in order to thus determine the consequent indemnity, the commission shall examine and consider the books and accounts of "The Cauca Company," at New (1328) York, the documents that the Government of Colombia and the company present to it in support of their respective claims, and such as the commission may demand; it shall inspect on the ground the works of the railroad and the rolling stock, in order to make the necessary checks and verifications for the determination of the facts which are to serve as the basis for fixing the indemnity, and shall have the right, for such purpose, to examine witnesses and appoint experts; it shall fix a reasonable period for the parties to be heard, to consider the proofs of data which may be presented by them for the determination of the structures, works and materials aforesaid, for the appraisal of the same, and for the fixing of the consequent indemnity; and it shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves.

Article VI. Should any of the members of the commission decline or resign from the position, or for any reason cease to act, the proceedings of the commission shall not thereby be invalidated, but the commission shall be restored by a new appointment, which is to be made by the party who appointed the member who fails to act, within thirty days, counting from the day on which such failure to act shall occur. If such party shall not comply with such obligation, the Secretary of State of the United States of America and the Minister of Colombia at Washington shall proceed by agreement to appoint the person to fill such vacancy.

Article VII. The Government of Colombia and "The Cauca Company" shall appear before the commission in person or by attorneys in fact or agents.

Article VIII. In order to carry into execution the proceedings fixed by this agreement and to render its decision, the commission shall meet in the place or places selected by it, and for such purpose shall have one hundred and fifty days (150),

counting from its installation, which may be extended sixty (60) days more in case justifiable grounds for delay shall arise. (1329) Article IX. The decision of the commission shall be final and without appeal, and the amount of the indemnity fixed by the commission shall be payable to the company as provided in the next following article:

Article X. The Government of Colombia, calculating approximately that the "Cauca Company" has disbursed in the work on the Cauca railway the sum of about two hundred thousand dollars ($200,000)—the company considering, however, such sum to be much less than the just price of the works executed by it—for the purpose of obtaining the immediate delivery of the railway, in conformity with the last part of Article 1 of Law 41 of 1896, pays in advance to the company the said sum of two hundred thousand dollars ($200,000) in gold on account of such amount of indemnity as the commission may fix, which sum the company acknowledges having received from the Government of Colombia to its entire satisfaction. In case such indemnity as may be fixed in conformity with this agreement shall be greater than the sum of two hundred thousand dollars, the Government is to pay the excess at such time, in such manner and on such terms as may be determined by the commission.

Article XI. The delivery to which Article II. relates shall be made by the company to the person or to the representative designated by the Government under a strict inventory, in which must appear the specifications and references relating to the matter, so that in the inventories the condition of everything that is delivered shall be clearly set forth.

Article XII. The expenses of the personnel, mobilization and plant of the commission shall be paid in advance, in equal shares by the company and the Government of Colombia, and the commission shall decide whether such expenses are to be charged against one or both of the parties.

Article XIII. Upon the performance by the company and the Government of the stipulations set forth in this agreement, both parties shall be discharged and released, the differences that have arisen between them shall be at an end, and the rights (1330) and obligations springing from the contract approved by Law 16, 1890, hereinbefore referred to, shall be extinguished. For such reason the company, from now henceforth, waives the right to any claim against the Government of Colombia under the contract aforesaid.

Article XIV. Within eight days next following the ratification of this agreement the Secretary of the Treasury of Colombia and the company shall nominate that member of the commission which each is to appoint.

Article XV. The commission, which is constituted by this

present agreement, shall meet and organize at New York within sixty days next following the day of the ratification of this agreement, which period may be extended for thirty (30) days more in case justifiable grounds of delay shall arise.

Article XVI. In order that this present agreement shall be valid, the ratification of His Excellency the Vice-President of the Republic, acting as Executive, shall be had.

In testimony whereof, this present is signed at the city of Bogota on the 4th day of January, 1897.

MANUEL ESGUERRA,
J. L. CHERRY,
Attorney in fact, General Manager and Agent of "The Cauca Company."

Executive Department, Bogota, January 4th, 1897.

Approved:

M. A. CARO,
The Secretary of the Treasury.
MANUEL ESGUERRA.

Sworn translation by Professor Francisco J. Amy (verified by oath of the noted Spanish author, Mr. Francis Sellen):

The Cauca Company.

Documents relating to the termination of the differences heretofore existing between the Government and "The Cauca (1331) Company" in connection with the contract as to the construction of the said railway and as to the acceptance and delivery of the railway under the agreement made between Mr. James L. Cherry under date of the 4th day of January of the present year.

Agreement for the settlement of the differences existing between the Government and "The Cauca Company" in connection with the contract for the construction of the Cauca railway.

The undersigned, that is to say, Manuel Esguerra, acting as the Secretary of the Treasury, authorized by His Excellency the Vice-President of the Republic, acting as the Executive, hereinafter designated "The Government of Colombia," of the one part, and James L. Cherry, acting as general manager, agent and attorney in fact of "The Cauca Company," organized in New York to construct the Cauca railway, hereinafter designated as "The Company," of the other part, in conformity with the bases of the agreement stipulated on the 27th day of November, 1896, between the Government of Colombia and Cherry, acting as aforesaid, bases consented to under the provisions of Article 1 of Law 41 of the year 1896, and under the general power of attorney, made to Cherry by the president of

"The Cauca Company," before Mr. José C. Morales, notary public of the city of New York, on the 31st day of December, 1890, and under the special power of attorney made also to the said Cherry by the president of "The Cauca Company" on the 23d day of October, 1896, before Mr. Julio C. Ponce de Leon, notary public of the city of New York, have entered into the following agreement:

Article I. The Government of Colombia and the company compromise and declare settled all pending differences between both parties in connection with the contract approved by Law 16 of the year 1890, regarding the construction of a railway from Buenaventura to Manizales, by means of the stipulations set forth in the following articles:

(1332) Article II. The company surrenders absolutely the concession to which Article I. of the contract approved by Law 16 of the year 1890 relates, and within fifteen days next following the day on which this agreement shall be approved, shall deliver to the Government of Colombia the Cauca railway with all its fixed plant, rolling stock on hand, works, buildings, tools, utensils of all kinds, appurtenances, etc., etc. In consideration therefor the Government of Colombia is to pay to the company a just indemnity for all the works constructed by the company during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the company for use on the railway and which are now in existence.

Article III. The Government of Colombia and the company accept in advance as the just and only indemnity a sum which shall be the equivalent of what the company shall prove it has expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., etc., imported for use on such railway.

Article IV. In order to determine the indemnity to which the foregoing articles relate the Government of Colombia and the company agree to constitute a special commission, to be composed of three (3) members who are to be named in the following manner: One by the Secretary of the Treasury of Colombia, another by the attorney in fact of "The Cauca Company," and the third to be agreed upon by the Secretary of State of the United States of America and the Minister of Colombia at Washington.

Article V. The Government of Colombia and the company hereby authorize the commission, to be constituted in the manner hereinbefore indicated, to fix the indemnity already mentioned, and such commission shall appraise the structures, works and materials referred to. For such purposes, and in order to thus determine the consequent indemnity, the commission shall examine and consider the books and accounts of "The Cauca Company" at New York, the documents that the Gov-

(1333) ernment of Colombia and the company present to it in support of their respective claims, and such as the commission may demand; it shall inspect on the ground the works of the railroad and the rolling stock, in order to make the necessary checks and verifications for the determination of the facts which are to serve as the basis for fixing the indemnity, and shall have the right for such purpose to examine witnesses and appoint experts; it shall fix a reasonable period for the parties to be heard, to consider the proofs or data that may be presented to them for the determination of the structures, works and materials aforesaid, the appraisal of the same and for the fixing of the consequent indemnity; and it shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves.

Article VI. Should any of the members of the commission decline or resign from the position, or for any reason cease to act, the proceedings of the commission shall not thereby be invalidated, but the commission shall be restored by a new appointment, which is to be made by the party who appointed the member who fails to act, within thirty days, counting from the day on which such failure to act shall occur. If such party shall not comply with such obligation, the Secretary of State of the United States of America and the Minister of Colombia at Washington shall proceed by agreement to appoint the person to fill such vacancy.

Article VII. The Government of Colombia and "The Cauca Company" shall appear before the commission in person or by attorneys in fact or agents.

Article VIII. In order to carry into execution the proceedings fixed by this agreement and to render its decision, the commission shall meet in the place or places selected by it; and for such purpose shall have one hundred and fifty (150) days, counting from its installation, which may be extended sixty (60) days more in case justifiable grounds of delay shall arise.

Article IX. The decision of the commission shall be final and without appeal and the amount of the indemnity fixed by (1334) the commission shall be payable to the company as provided in the next following article:

Article X. The Government of Colombia calculating approximately that "The Cauca Company" has disbursed in the work on the Cauca railway the sum of about two hundred thousand dollars ($200,000)—the company considering, however, such sum to be much less than the just price of the works executed by it—for the purpose of obtaining the immediate delivery of the railway, in conformity with the last part of Article I. of Law 41, of 1896, pays in advance to the company the said

sum of two hundred thousand dollars ($200,000) in gold on account of such amount of indemnity as the commission may fix, which sum the company acknowledges having received from the Government of Colombia to its entire satisfaction. In case such indemnity as may be fixed in conformity with this agreement shall be greater than the sum of two hundred thousand dollars, the Government is to pay the excess at such time, in such manner and on such terms as may be determined by the commissioners.

Article XI. The delivery to which Article *11* relates shall be made by the company to the person or to the representative designated by the Government under a strict inventory in which must appear the specifications and references relating to the matter, so that in the inventories the condition of everything that is delivered shall be clearly set forth.

Article XII. The expenses of the personnel, mobilization and plant of the commission shall be paid in advance, in equal shares by the company and the Government of Colombia, and the commission shall decide whether such expenses are to be charged against one or both of the parties.

Article XIII. Upon the performance by the company and the Government of the stipulations set forth in this agreement both parties shall be discharged and released, the differences that have arisen between them shall be at an end, and the rights and obligations springing from the contract approved by Law 16 of 1890, hereinbefore referred to, shall be extinguished. (1335) For such reason the company from now henceforth waives the right to any claim against the Government of Colombia under the contract aforesaid.

Article XIV. Within eight days next following the ratification of this agreement the Secretary of the Treasury of Colombia and the company shall nominate that member of the commission which each is to appoint.

Article XV. The commission which is constituted by this present agreement shall meet and organize at New York within sixty days next following the day of the ratification of this agreement, which period may be extended for thirty (30) days more in case justifiable grounds of delay shall arise.

Article XVI. In order that this present agreement shall be valid, the ratification of His Excellency the Vice-President of the Republic, acting as Executive, shall be had.

In testimony whereof, this present is signed at the city of Bogota on the 4th day of January, 1897.

MANUEL ESGUERRA.
J. L. CHERRY,
Attorney in fact, General Manager and Agent of "The Cauca Company."

Executive Department, Bogota, January 4th, 1897.

Approved:

M. A. CARO,
The Secretary of the Treasury.
MANUEL ESGUERRA.

The foregoing is a true translation of the convention of January 4th, 1897, this translation being done by me, and having my initials on each separate page thereof.

(Signed) F. J. AMY.

It is to be noted:

1. That the convention is the final instrument by which the parties, in conformity with the Basis of Agreement of (1336) November 27, 1896, compromised, fully settled and declared at an end all differences growing out of the concession.

2. That the company surrendered, absolutely, the concession and that the surrender was complete at the instant of the execution of the convention. (Article II.)

3. That the company, having "surrendered" the concession, bound itself to "deliver" the "road, with all its fixed plant, rolling stock on hand, works, buildings, tools, utensils of all kinds, appurtenances, etc., etc." Note, that the company was not to transfer or deliver to the Government any of its shares, moneys, accounts, bills receivable or evidences of debt, nor any assets or property of any kind, except the concrete, tangible property which, taken as a whole, constituted the Cauca railway and its appurtenances, accessories and equipment. The concession, being a mere *right* granted by the Government, was absolutely extinguished by surrender and therefore wholly ceased to exist for any purpose. But the company lost none of its chartered rights or privileges. These it retained in their entirety. Nor did it escape any liability, except such liability as it might have been under to the Government. (Article II.)

4. That, as consideration for the surrender of the concession and the delivery of the road and its appurtenances, accessories and equipment, the Government bound itself "to pay to the company a just indemnity for all the works constructed by it during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the company for use on the railway and which are now in existence."

The above quotation is from the Amy translation of the convention. (Article II.)

The Olcott translation of the same clause is as follows: "To pay to the company a just indemnity for the work of every kind completed by the company during the time the railway has been in its charge, and for such rolling stock and other

(1337) things imported by the company for use on the railway, and which are now in existence."

The translations are, in substance and meaning, alike. Each translator has preserved the sense of the Spanish text, which is wholly unambiguous and provides, in substance, that the Government is to pay a just indemnity for the work executed or accomplished by the company while the undertaking or enterprise was in its hands—but the undertaking which was on hand was the construction and equipment of the Cauca railway. The Spanish text of the full sentence from which the quotation is taken is as follows:

"En cambio, el Gobierno de Colombia pagará á la compañia una justa indemnigacion por las obras y trabajos que la compañia haya ejecutado durante el tiempo en que la empresa ha estado á su cargo y por los materiales rodantes y demás elementos que haya introducido con destino al ferrocarril y que existen en la actualidad."

It must be noted, with great care, that the Second Article of the convention (from which the above is taken), while it states for what the indemnity is to be paid—(1) the surrender of the concession, and (2) the delivery of the road and its appurtenances and equipment—avoids any mention of the amount of the proposed indemnity, and gives no rule or standard by which such indemnity may be measured, calculated or fixed. The company is to be indemnified, in some way, for two acts—(1) the act of surrendering the concession; (2) the act of delivering the road and its appurtenances and equipment; but neither the way of getting at the indemnity nor its amount is mentioned. That, being a very important matter, was left for a separate article. It must be observed, then, that the Second Article of the convention, so far as indemnity is concerned, merely provides that, in some way not disclosed in the article, the Government, as consideration for the surrender of the concession and the delivery of the road, etc., is to indemnify the company for what it has accomplished in the way of the building and (1338) equipment of the road. It must also be carefully noted that there is no provision for a "full" indemnity, but merely that the indemnity shall be a "just" one—that is, a just one under the circumstances. The circumstances were that the concessionary, under penalty of forfeiture, had undertaken to construct and equip about 131½ kilometers of railroad within the "peremptory period of four years," and that, in more than six years he had not constructed ten kilometers. What should be deemed a "just" compromise between forfeiture and reimbursement was a question that required negotiation. After negotiation the parties settled it, and carefully defined what should be deemed a "just" indemnity. It is worthy of note that, although the indemnity to be paid by the Government is in

consideration of the surrender of the concession, as well as of the delivery of the road, etc., neither the cost nor value (if it had a value) of the concession is mentioned as one of the factors to be considered in fixing the indemnity. It is also worthy of note that, although the company was to deliver up the old road (from Buenaventura to Cordoba), which it had received from the Government, and was also to deliver up all materials connected with the railroad—which would include the materials received from the Government, whether they had been used in repair or construction or were still on hand—the indemnity was not to include anything in respect of the road or material received from the Government. It appears, therefore, that the three contributions originally made by the Government, that is (1) the concession or right to construct, equip and run the railway, (2) the original railway (from Buenaventura to Cordoba), and (3) the railroad materials, tools, etc., turned over to the concessionary for use—were to be surrendered and delivered up, but were not to be valued in fixing the indemnity. In other words, it seems to have been agreed upon as "just" that the Government should receive back its original contributions (concession, original road and materials), together with the newly-constructed road and its equipment, and only pay what had been expended on the latter. (Article II.)

(1339) 5. That, in and by the convention (Article III.), both the Government and the company bound themselves to accept, and they adopted and laid down, a specific standard or measure by which the commission should be bound in ascertaining and computing the indemnity, and that they mutually agreed that the indemnity—to be reached by the application of the standard of measurement which they had provided—should be accepted in advance as both a *just* and the *only* indemnity. The intent of the parties to leave no ground for question as to the scope of the indemnity is very clear, for they take care to say that the special indemnity provided shall be accepted as "just," and that it shall be the "only" indemnity. Had the intent been to indemnify, generally, very different language would have been employed, and there would have been no occasion for saying that the indemnity should be accepted as just—a full and general indemnity must always be just; but, when the intent is to allow a limited or special form of indemnity, there is good reason for providing that such special indemnity shall be accepted as just. The use of the words "accepted in advance as the just and only indemnity" indicates a mutual intent to leave no ground for misunderstanding, to make it clear that whatever sum should be reached by applying the standard of measurement by which the commission was to be controlled, should be accepted as the "just and only indemnity" appropriate to the circumstances. The circumstances were peculiar, and it is im-

portant that they should be carefully noted: The Government had initiated proceedings in forfeiture; under the 37th Article of the concession the company was entitled to demand arbitration on the question of the Government's right of forfeiture—but upon nothing else—the result of which arbitration could only have been to either justify the forfeiture, in which case the Government would have taken the road free of the concessionary's claims, or to disallow the forfeiture, in which latter case the concessionary would have retained the road and concession; *but no question of indemnity could have arisen under* (1340) *said 37th Article;* the United States had amicably intervened, and the Colombian Government, in a friendly and generous spirit, had agreed to waive its strict right of forfeiture and to pay to the company what the latter had expended on the construction and equipment to be turned over, the amount of such expenditure to be ascertained by a board of arbitrators; the Government had rejected all claims formulated by the company; *the proposed arbitration was one not provided for by the concession*, but was one specially agreed upon, *not to pass upon any question of forfeiture*, but only *to make a particular valuation and allow the same as an indemnity.* Under such peculiar circumstances the Government desired to place it beyond question that the special indemnity agreed upon as appropriate to the circumstances should, in the agreement of settlement itself, be acknowledged and declared to be not only the sole indemnity, but a just one. This was particularly proper, in view of the fact that the company, although wholly unable to go on with the road—being utterly and hopelessly without adequate funds, and having practically ceased construction as early as December, 1893 (see Cherry report of December, 1893), had attempted to excuse its hopeless default and inability ever to construct the railway by unjustly claiming that the Government itself had caused or contributed to said default. Thus, all the circumstances rendered it peculiarly appropriate that whatever compensation the Government should consent to allow should be accepted as just and final, and that the standard by which that compensation should be measured should be free from doubt, and of such nature as to be readily applied by the experts who should act upon the commission.

6. It is to be noted that the parties themselves agreed that the amount of the compensation and indemnity to be allowed by the arbitrators should be "the equivalent of what the company shall prove it has expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., etc., imported for use on such railway."

(1341) (The foregoing is from the Amy translation, and, as to its rectitude and the proper rendition of the original Spanish

text see testimony of Messrs. Carter, Dougherty, Cisneros, Menocal, Amy, Adams, Olcott and Fuller.)

The Spanish text of Article III. is as follows:

"Artículo 3°. El Gobierno de Colombia y la compañia reconocen de antemano como justa y unica indemnizacion, una suma que equivalga á lo que la compañia compruebe haber costeado en los trabajos y obras ejecutados por ella en la construccion de la expresada via ferrea y en los materiales rodantes, herramientos, etc., etc., introducidos con destino á la misma via."

As expressed in the Spanish text, the intent of the parties is very apparent. It is, that the compensation which the company shall receive for what it has given up and what it has promised to deliver has been agreed before hand to be a "just" and the "only" compensation that it shall have, and that that compensation shall be measured and limited by the amount of its expenditures on construction and for rolling stock, tools, etc., etc., imported for use on the said railway. There is nothing at all either vague, uncertain or ambiguous about this provision, unless it be with respect to the "etc., etc.," but whatever is included in the et cæteras, it is clear that nothing can be so included except *importations for use on the railway.*

It is to be carefully noted that, whatever may be the meaning of the words "*en los trabajos y obras ejectutados,*" the expenditures by which the indemnity is to be measured and limited are, expressly, only such as the company shall prove that it has expended "*en la construccion ds la expresada via ferra y en los materiales rodantes, herramientos,* etc., etc., *introducido con destino a la misma via,*" that is, " in the construction of the said railway and for rolling stock, tools, etc., etc., imported for use on such railway." This is very important. The words, "*en los trabajos y obras ejecutados*" may be excluded (1342) from the article without affecting its meaning in respect of the *two fields* within which the expenditures referred to were to be confined, which were (1) the field of construction and (2) the field of equipment. The fields within which must lie the expenditures to be repaid being definitely limited, it becomes unimportant whether we say "expended in the *work and labor of* construction," "expended in the *construction of the railway,*" or " expended in the '*works and working*' (Ponce), *executed in the construction of the road,*" for in each case we confine the expenditures within the limits circumscribed for them in the article—that is, the field of *construction* and the field of *equipment.* While the language of the article is perfectly clear in itself, and cannot be so distorted as to be made to appear to mean anything else than that the indemnity shall be confined to expenditures on construction and equipment, it is equally clear that the parties, had they intended to cover

expenditures not usually carried, bodily, into construction or equipment account, would have been very careful to make that intent apparent beyond dispute. To provide that moneys paid by a company for construction and equipment shall be repaid, is one thing, but to provide that moneys expended by a company in payment for a concession, in hiring offices for a company, in paying salaries of officers, in travelling expenses of officers on trips made to raise funds for the company or to save it from loss, in payment of interest, in payment for extra services of its officers etc., etc., is quite another thing. Having in view only expenditures upon construction and equipment, the parties expressed themselves accordingly—had they intended to cover the other classes of expenditures specified they would have used some appropriate form of words to make that intent clear. To illustrate the gross absurdity of including such other classes of expenditures in construction or equipment account, it will be as well to note the particular nature of such expenditures, *e. g.*, the company claims to have expended, or promised to expend, $135,000 in payment for the concession, but the (1343) concession was for the peremptory construction and equipment of 131½ kilometers of new road and the permissive construction and equipment of a great deal more, while the concessionary or his assigns actually constructed and equipped but $9\frac{866}{1000}$ kilometers. (See testimony, 347, and stipulations of August 31st, 1897, showing number of completed kilometers, pp. 762 and 763.)

How absurd to say that the $135,000 claimed to have been paid for the concession (under which, as seen, the concessionary was absolutely bound to construct and equip not less than 131½ kilometers), should for any purpose be charged in construction or equipment account, and how much more absurd to claim that the whole $135,000 should be charged as only *part* of the cost of the paltry kilometers actually built! Again, after the Government had paid to the company, in advance, $200,000 gold, which was the Government's estimate of the amount of the entire indemnity to be paid, the company (controlled by Cherry and Schramme) paid to the latter gentlemen $50,000 of the said $200,000 as compensation for their services in negotiating the settlement. How grossly absurd to say that such $50,000 was part of the cost of construction and equipment! Had the whole $200,000 been taken by Cherry and Schramme, then, on the company's theory, the construction would have cost the actual expenditures made therein plus the $200,000. Nothing further is needed to demonstrate the preposterousness of departing from the clear, comprehensive and very appropriate phraseology of the article.

Before closing the discussion as to the force and importance of Article III., it may be well to say that the special function

of this article is to control the amount and extent of the indemnity by providing the only standard by which it shall be measured. On the question of the amount of the indemnity it is the *controlling article*. It would be error to hold that the clear meaning of Article 3rd is modified by the provisions of Article 2nd for (1) Article 2nd does not pretend to go further than to say that a "just" indemnity shall be paid (leaving the (1344) "justness" to be agreed upon in the next article), and so leaves the question of extent wholly open, thus not conflicting with Article 3rd; and (2) even if it were admitted, for argument, that Article 2nd, if standing alone, would imply payment of a full indemnity for all the company's expenditures, still it is a firmly settled rule of construction that where general words are followed by special provisions, the special provisions shall control. Where language expressive of a general intent is followed by provisions indicative of a special or limited intent, in respect of the same matter, the special provisions always prevail, and this for the reason that, while general matters are usually introduced in general terms, particular matters are set forth in particular terms; general terms are employed to convey the general sense, while particular terms are used to set forth the particulars of the general subject; but the particular matters are the matters which are to be acted, accomplished or provided for.

It is also a general rule of construction that words are supposed to be used with due regard to the subject matter to which the instrument in which they are found relates; thus, if property is to be transferred and payments are provided for, the payments are held to be in consideration of the transfer whether such be the *expressed* reason for the payments or not, for, in the absence of the expressed intent, the law and common sense imply the intent or motive from the conjunction of the provisions for the transfer and the payment in the same instrument.

In comparing Articles 2nd and 3rd it will be seen that there is no repugnancy between them, but that each article has its own peculiar function in the general scheme of the convention. But even were there present what might at first appear to be a repugnancy (which is not at all the case) the *first duty* of construction would be, as it always is, to endeavor by all rational means to avoid the apparent inconsistencies, and to reconcile the seemingly incongruous provisions one with the other, so that, by a reasonable reading of the instrument—a (1345) reading taking the sense as well from the subject matter treated of as from the justifiable interpretation of language—all parts of the paper may be harmonized, and a rational, permissible and coherent intent or purpose be discovered and effectuated. By the application of these plain and reasonable

rules to the construction of Articles 2d and 3d of the convention it will be found that the articles are not repugnant to each other, but that while the clear purpose of one is merely to provide for the surrender and delivery of property, and to declare that some compensation to be deemed just shall be made therefor, the equally clear purpose of the other is to declare the precise method by which the amount of such compensation shall be ascertained. This rational and authoritative method of construction will explode the false and untenable theory that the indefinite terms of the Second Article in respect of the indemnity (which terms only provide that the indemnity shall be one which, under the circumstances, shall be "just") control the clear and precise terms of Article 3d, which latter article gives the only and sole standard of measurement by which the compensation to be awarded shall be fixed.

Article Third, then, should be allowed to retain the plain meaning which appears upon its face. (Article III.)

7. The phraseology of Article IV. is to be particularly noted. Here we find the same discriminating use of words that characterizes the other articles of the convention. The article is short, and is couched in terms well chosen to convey and limit the intent of the parties. Its purpose is to provide for the appointment of a commission to fix the indemnity, but it will be observed that the commission is to be a "special" (*especial*) one, and that care was taken to describe the indemnity as the one "to which the foregoing articles relate" (*de que tratan los articulos anteriores*). Even here care was observed to allow no ground for question of the intent—the commission is to be a "special" one, and its special duty is not to fix a general indem-
(1346) nity, but to fix the particular indemnity "to which the preceding articles relate." (Article IV.)

8. The provisions of Article V. are also unambiguous in their references to the indemnity, and show the same care which is manifest in the articles which precede it. The indemnity is referred to as "the indemnity already mentioned," and the commission is authorized to "fix" that indemnity—that is, "the indemnity already referred to," and not any other or different indemnity.

As it is important that the very wording of the article should be kept in mind, the article is transcribed in its entirety. It is as follows:

"Artículo 5°. El Gobierno de Colombia y la compañia facultan á la comision, que se constituriá de la manera antes indicada, para fijar la indemnizacion de que antes se ha hablado, debiendo con este fin tasar tal comision, las obras, trabajos y materiales aludidos. Para esto, y para fijar asi la consiguiente indemnizacion, la comision deberá examinar y apreciar los libros y cuentas de "The Cauca Company" en New York, los docu-

mentos que el Gobierno de Colombia y la compañia la presenten en apoyo de sus respectivos derechos y los que la misma comision exija; inspeccionará sobre el terreno las obras y trabajos del ferrocarril y los materiales rodantes, á fin de hacer las confrontaciones necesarias para la determinacion de los hechos que deben servir de base á la fijacion de la indemnizacion, pudiendo para esto examinar testigos y nombrar peritos; fijará un término prudente para oir á las partes, estimará las pruebas y datos que presenten referentes á la determinacion de las obras, trabajos y materiales precitados, á la tasacion de ellos y á la fijacion de la indemnizacion consiguiente; y fijará el procedimiento que debe seguir en el ejercicio de las facultades que se lá confieren, tanto en relacion con sus propios actos cuánto en relacion con las gestiones de las partes."

It will be observed that in order to fix the indemnity the commission is to "appraise" the "*obras, trabajos y materiales aludidos*";—whatever the "*obras, trabajos y materiales*" are, (1347) it is clear that they are only such as have been "alluded to," and it is equally clear that they are to be "appraised." By reference to the 3rd Article, it will be seen that the things the expenditures upon which are to constitute the measure of the indemnity are therein alluded to, and that the said expenditures are only such as shall have been made "in the construction of the said railroad and for rolling stock, tools, etc., etc." It follows that, whatever may be the various meanings of the words "*obras*" and "*trabajos*," they are here intended to refer only to things which constitute part and parcel of the construction work of the railway. It must also be remembered that the convention, as a whole, refers to the delivery of concrete things which are to be "appraised," and that the testimony shows that the words "*obras y trabajos*," when used in relation to railroads, indicate the structural work, and such work in and upon the ground as may be necessary to prepare the roadbed to receive the superstructure. (See testimony of Messrs. Carter, Dougherty, Cisneros, Menocal, Amy, Adams, Olcott, Fuller, pp. .)

In getting at the meaning of the 5th Article, in respect of the measuring of the indemnity, it is important to note the sequence of its provisions. In the first sentence of the article the commission is authorized to "fix the indemnity already mentioned," and is required to "appraise *las obras, trabajos y materiales aludidos*." The very next sentence opens as follows: "For such purpose, and in order to fix the consequent indemnity, the commission shall examine and consider the books and accounts of 'The Cauca Company' at New York; * * * it shall inspect on the ground the works of the railroad and the rolling stock, in order to make the necessary checks and verifications for the determination of the facts which are to serve as the basis for fixing the indemnity." * * * It is clear

that the opening words of the sentence " For such purpose, and in order to determine the consequent indemnity," refer back to the appraisement, and that the meaning is the same as would (1348) be conveyed by the words " That, for the purpose of appraising the works and materials referred to, and by such appraisement arriving at the consequent indemnity." The examination of books, documents and witnesses, and the inspection of the road and its equipment, are all matters to be done *in aid of the appraisement* and for the purpose of enabling the commission to ascertain the expenditures in construction and equipment. If the words " for such purpose," just above quoted, do not refer to the appraisement which the commission is to make, they can only refer to the *fixing of the indemnity* provided for in said first sentence of said Fifth Article. But to refer them to that provision would be equivalent to holding that the intent of the two sentences, so connected by such reference back, was to state that "for the purpose of fixing the indemnity and thus arriving at the consequent indemnity," the commission was required to examine and inspect. This could not be the sense intended to be conveyed, and it is clear that the words "for such purpose" refer to the appraisement. As the words "for this purpose" refer back to the appraisement, it is certain that the words "*y para fijar asi la consiguiente indemnizacion*" (and in order to thus determine the consequent indemnity), relate to the act of appraisement, and thus we have another indication of the general purpose to limit the indemnity to the amount of the expenditures upon construction and equipment—which expenditures were to be gotten at by appraising the constructed work and the equipment of the road, after having examined the books, accounts, &c., and after having inspected the "works" on the ground. It is important to note that the commission is to "inspect on the ground," "*las obras y trabajos del Ferrocarril y los materiales rodantes.*" Here the words "*obras y trabajos*" are used, as they are used throughout the convention, to designate the concrete works of the road—the things which can be " inspected on the ground."

(1349) In the latter part of the second sentence now under consideration, the words "*obras, trabajos y materiales*" are again employed, and again it is found that, as used, they can only refer to concrete things which may be the subjects of appraisal. The sub-sentence in which the words occur is as follows: "*fijara un termino prudente para oir a las partes, estimara las pruebas y datos que presenten referentes a la determinacion de las obras, trabajos y materiales precitados, a la tasacion de ellos y a la fijacion de la indemnizacion consiguiente.*" * * * The words are best rendered into English as follows:

" It shall fix a reasonable period for the parties to be heard,

to consider the proofs or data that may be presented to them for the determination of the structures, works and materials aforesaid, the appraisal of the same and for the fixing of the consequent indemnity."

By the foregoing it appears that the commission is to "fix a reasonable time" for the following purposes: (1) For the parties to be heard; (2) for its consideration of the proofs or data which the parties shall present for the determination (ascertainment) of the *obras, trabajos y materiales* before specified; (3) for the appraisal of said before specified *obras, trabajos y materiales;* and (4) for the fixing of the indemnity consequent upon such appraisement.

Nothing could be clearer, then, than that the "*obras, trabajos y materiales*" referred to in Article V. are concrete things—structures, works and material entities—which can be "inspected on the ground" and which can be "appraised." It is also absolutely certain that these concrete entities—these *obras, trabajos y materiales*—are the same things which (under Article II.) are to be "delivered" to the Government, which (under the same article) are to be paid for by the Government, and which (under Article III.) are to be employed (by finding what the company has expended upon their construction or purchase) as measures of the agreed "just and sole indemnity" to be allowed by the commission.

(1350) With respect to the words "*obras, trabajos y materiales,*" it may be said that, throughout both the preliminary "Basis of Agreement" and the final convention, they are uniformly and consistently employed to designate the concrete entities which, taken together, constitute the Cauca railway and its equipment; that they describe the tangible, substantial things that are to be viewed, inspected, appraised and delivered to the Government—the things used in and which form part of the constructed road and its equipment, and that the words "*obras y trabajos*" are nowhere employed, either in the Basis of Agreement or in the convention, to indicate or describe any mental, physical or other work or labor except that which was done in or upon the road in the operation of laying out or constructing the same or its appurtenances.

With respect to the indemnity it may be said that both the Basis of Agreement and the convention provide that there shall be but a single, sole and exclusive indemnity, declare that such indemnity has been agreed upon as being just, and give to the commission the only standard of measurement by which such indemnity shall be ascertained and gauged.

The commission is to ascertain the expenditures upon the work, labor and materials employed in construction and the sums paid for equipment, and the total of these expenditures shall constitute the sum of the indemnity. The purpose of the

appraisement is to get at the honest value of the property which the company is to turn over to the Government, and by comparison of results with expenditures to enable the commission to determine how much has been legitimately expended for construction and equipment. A promise to repay expenditures is a promise to pay *bona fide* expenditures and no more. The appraisement of the road and its equipment, the inspection of the same on the ground, the investigation of accounts by the examination of books, vouchers and witnesses and the employment of experts are all and only parts of a comprehensive plan for the ascertainment of the sum of the *bona fide* expenditures (1351) upon the construction of the road and in the purchase and installation of the equipment. The convention is the careful production of a logical mind, and proceeds in orderly sequence to provide for the accomplishment of the purpose for which it was entered into:

(1) It declares settled the differences growing out of the concession;

(2) It then extinguishes the concession and provides for the delivery to the Government of the substantive property, constituting the railroad and its equipment constructed and put in place on Colombian soil by virtue of the concession;

(3) It then declares that a just indemnity shall be paid for the constructed work and for the material things imported for use on the railway;

(4) It then provides that as such just and as the sole indemnity the Government shall pay a sum equal to what the company shall prove that it has expended on the construction work of the railway, and in the purchase of the equipment thereof—the burden and duty of proving the expenditures made for the construction and equipment being cast upon the company, and the parties expressly agreeing to accept such expenditures, in advance, as the just and only measure of the indemnity.

(5) It then provides for the creation of a commission or Board of Arbitrators, whose duty it shall be "to determine the indemnity to which the foregoing articles relate."

(6) It then, in a single sentence, authorizes the commission to "fix the indemnity already mentioned," and commands such commission to "appraise" *las obras, trabajos y materiales aludidos* (the structures, works and materials referred to).

(1352) (7) It then, in order that the appraisement shall be made and the amount of the consequent "indemnity" arrived at, directs, in aid of the appraisement, that the books, accounts and documents shall be examined and considered, and that the property to be turned over shall be "inspected on the ground."

(8) It then provides that time shall be given (1) for hearing the parties, (2) for considering the proofs by which the *obras, trabajos y materiales* shall be ascertained or determined,

(3) for the appraisal of said *obras, trabajos y materiales* (which must, as shown before, be such things as can be delivered or turned over), and (4) for the "fixing of the consequent indemnity."

(9) It then (after providing for procedure, the keeping alive of the commission, &c.) declares what shall be the force of the decision of the commission, and how any award by it shall be payable.

(10) The other provisions of the convention are not important in analyzing the convention in respect of its outlines and their sequence or orderly relation one to the other, except that it is worthy of notice that by the 11th Article it is declared that there shall be an *inventory* of the property to which the delivery mentioned in Article 2d relates, that by the 2d Article only concrete entities are to be delivered, inclusive of the road and its entire equipment, no matter at whose expense constructed or furnished, and that by the 3d Article the "just and only indemnity" is to be measured solely by the company's *proven* expenditures *on construction and equipment.*

From the foregoing analysis of the convention it is certain that under that instrument the commission has power only to award an indemnity which shall be equal to what the company shall prove that it has expended in construction work and for such equipment as it shall have imported for use on the railway. (1353) While the foregoing conclusion is the only one justified by the terms of the convention, and is arrived at by a consideration of the separate articles of that instrument, it is most important to note that neither the Basis of Agreement nor the convention contains any reference to the company's losses, general expenses, traveling expenses, official salaries, office rents, payments of interest, outstanding bonds or obligations, payments to Schramme or Cherry for extra services, or legal expenses, nor does either instrument contain any words or provision from which an intent to pay to the company anything on either of those accounts can be inferred. The Government did not undertake to *insure* either the defaulting, irresponsible Cauca Company or its stockholders or creditors against loss, but merely gave up an absolute legal and moral right to impose the penalty of forfeiture provided for in the concession, and agreed to pay to the company what the latter could prove that it had fairly spent in the construction work and equipment which it had contributed to the road, and which the Government was to receive at its hands. In other words, at the request of the American Minister, the Government generously waived its clear right to insist upon the provisions of the 39th Article of the Concession, by which, on failure of the company to complete the road to Cali within the "peremptory period of four years," specified in Article 4th, all the works constructed by the concessionary should be-

come the property of the nation, and, instead of enforcing the forfeiture incurred, agreed to pay to the company the moneys that had been expended in construction and equipment. By the execution of the convention, the parties were left in the following positions:

The Government had granted the generous concession, with its subsidy, upon the concessionary's solemn promise and obligation to construct and equip a railway that should open up the Cauca Valley, and thus return to the nation a consideration for the privileges and subsidy which it had granted, and the concessionary had also solemnly promised that should he fail to keep (1354) his agreement to build, equip and open the road "within the peremptory period of four years" granted to him (and he had no right, legal or moral, except that which was thus granted on such condition), he would give up to the Government whatever he had built or constructed under the concession; the concessionary had failed to keep his promise, and the Government had the absolute right to impose the penalty of forfeiture and to take the road free from any claims whatsoever; while waiting for the concessionary to build the road and open it to traffic, the Government had paid to him or his assigns the sum of $140,747.02 in gold in full of the subsidy which it had granted to cover possible loss, expenses of operation, &c.

By the execution of the convention, then, the following became the situation:

The Government failed to secure the opening of the Cauca Valley—the entire consideration for which it had granted the concession and subsidy; it gave up its stipulated and legal right to a forfeited road—a sacrifice to its friendship for the United States involving a direct loss of the value of the newly constructed road (without equipment), about $213,000; and its payment of subsidy, amounting to $140,747.02, became a total loss. In addition, it took the road and equipment off of the hands of the defaulting and bankrupt company, and agreed to pay therefor whatever sums the latter had expended for construction and equipment. On the company's part the situation was quite different: Although it was bankrupt and in gross default; although it had let the road run down and had pocketed the moneys which should have gone to repairs; and although the company's chief managers had drawn from the funds of the company between $300,000 and $400,000, or were in process of doing so (the amount has now been largely realized), the company was relieved of forfeiture, was not required to repay any part of the $140,747.02 which the Government had paid as subsidy, and was made whole by the latter for every dollar that had been legitimately expended on the construction work and equipment of the road!

(1355) The personal accounts of Messrs. Cherry and

Schramme are in striking contrast with the losses and disappointments of the Government and the misfortunes of the company. Irrespective of any profits in stock or bonds, these gentlemen appear to have received the following sums—not in "*libranzas*:"

Payments to Mr. Cherry.		Payments to Mr. Schramme.	
1892.		1892.	
July 31.....	$934 49	Dec. 31.....	$7,200 00
Dec. 31.....	13,000 00		
1893.		1893.	
Dec. 31.....	12,000 00	Dec. 31.....	7,200 00
1894.		1894.	
Dec. 31.....	12,000 00	Dec. 31.....	7,200 00
1895.		1895.	
Dec. 31.....	12,000 00	Dec. 31.....	7,200 00
1896.		1896.	
June 3.....	135,000 00	June 3.....	9,174 46
(by credit)		½ of $18,348.93	
June 3.....	9,174 47	June 29.....	50 00
½ of $18,348.93		Dec. 31.....	7,200 00
Dec. 31.....	9,515 95		
" "	12,000 00		
1897.		1897.	
Feb. 16.....	5,730 00	Feb. 16.....	5,730 00
½ of $11,460			
Mar. 3.....	25,000 00	Mar. 3.....	25,000 00
" 31.....	9,125 00	" 31.....	1,800 00
	$255,479 91		$77,754 46

The above items are copied from the company's filed account (Ex. Company's claim).

Thus we find that while the Government, which intrusted Cherry and his associates with the concession and its subsidies, has lost every dollar of its advances, and has lost the advantage of the opening up of the Cauca Valley, and has taken the run-down road at cost of construction and equipment, and while the investors who have intrusted their moneys to the managers of (1356) the enterprise have suffered bitter loss, it cannot be truthfully asserted that the undertaking has been *universally* disastrous.

From the above account, filed by the company herein, it appears that Messrs. Cherry and Schramme from June 3d, 1896, to March 10th, 1897, received $79,808.93 for traveling expenses, "and so forth," of their two trips to Bogota. For that amount Cook's Tourist Corporation would have carried this

modern Damon and Pythias in luxury forty times round the world!

Stipulation as to Cost of Construction and Equipment.

On the 31st day of August, 1897, after the Government had about concluded its proofs and had made it certain that the fair cost of the construction and equipment involved in the inquiry had not exceeded $233,909.14, counsel for the company accepted the Government's figures and stipulated upon the record as follows:

"It is stipulated by the parties to this controversy that in fixing the amount expended by the company upon the following items of construction work and equipment on and of the Cauca railroad, the commission shall find, in lieu of an appraisement of the items, that said company expended on said items the following sums, that is to say:

"Surveys	$22,805 00
"Completing road from K. 27.100 to K. 29.750	40,652 58
"Completing road from K. 29.750 to K. 36.740	133,546 55
"Work beyond San José	15,328 01
	$212,332 14
"Rolling stock	21,577 00
"Making in all	$233,909 14

(1357) "This stipulation is without prejudice to any claim or defense of either party relative to any matter not specifically mentioned above."

In view of the terms of the Convention by which this controversy was submitted to arbitration, which terms limit the indemnity, if any, to a sum equal to the construction expenditures and the moneys paid for such things as were imported for use on the railway, the examination of the facts involved, and alleged to be involved herein, might now be closed. But, notwithstanding the special limitations of the convention, and in spite of the stipulation agreeing upon the sums involved in such construction and equipment expenditures, the company's representative has persisted in claiming a further indemnity, which claim, as the commission has not yet ruled finally upon it, makes a further analysis necessary.

In order, then, that the company's position as claimant may be understood, it will be necessary to find out upon what its alleged claims are based, and, as no formal bill of complaint has been filed, reference must be had to the written opening address of claimant's learned counsel, wherein are elaborately set forth the various grounds of complaint upon which the company deems itself entitled to proceed. As it is fair and also important

that the company's case should be presented in the form and with the strength designed by those in control of its interests, it has been deemed best that the opening address on behalf of the company should be here set forth in full—but, in thus giving it permanency and a certain degree of publicity, we protest that we are not actuated thereto by any feeling of malice against either the company or its polished and learned counsel.

Opening Address and Statement of Claim on Behalf of This Company.

(1358) In coming before your honorable body I deem it my duty to preface my remarks and the claim I have the honor to present to you on behalf of the Cauca Company with a short history of the question at issue from its inception.

The concession, or, as it is called, Contract No. 20, was obtained by Mr. James L. Cherry during the year 1890, at a heavy expense, both for moneys actually expended by him for his personal expenses during the nine months' stay in Colombia, as well as for compensation given for work and services rendered by parties who were employed by him. Upon his return to New York a company of highly influential and financially strong persons was then formed during the latter part of the year 1890, to whom this concession was transferred by Mr. Cherry for a just and equitable consideration. This company deposited with Mess. Camacho, Roldan & Van Sickel, agents of the Colombian Government, the $50,000 gold required under said concession, but upon the distinct and clear understanding that the Colombian Government would faithfully fulfill its part as agreed to under said concession. In order to push work and commence operations, $250,000 were at once paid in, and work was commenced in earnest, upon a liberal scale, on January 1st, 1891. Work progressed rapidly and to the satisfaction of every one, as can be shown by competent witnesses, by the public press and the *Diario Oficial* of Colombia, during the year 1891, though the company was seriously embarrassed by the lack of labor and frequent disturbances among those employed, notwithstanding the herculean efforts and large expenses incurred by the company to bring more laborers from the interior. During this year the first breach of faith on the part of the Colombian Government occurred, inasmuch as the latter had agreed, in accordance with Article 27 of the Concession, to furnish us with military protection, but when asked to do so did not comply with (1359) our repeated requests. Our company having complied, on the 18th of July, 1891, with the conditions of Article 25 of the Concession, the return of the deposit of $50,000 gold became due and the repayment thereof as per Articles 25 and 26 was duly requested by proper notification to the Colombian

Government. On August 16th, 1891, the repayment of this deposit was decreed by the Minister of Fomento, but notwithstanding our repeated requests for payment, the Government only paid us on the 2d of April, 1892, not in kind as deposited by us, viz.: gold, but in *libranzas* or orders on the custom houses of the Pacific, admissible for the payment of custom-house dues to the extent of fifty per cent. This arrangement was only brought about by a personal visit to Bogota of Mr. C. F. Schramme at great expense and loss of time, and he was forced to accept the only available way of payment, inasmuch as the Colombian Government had disposed of the original deposit for its own use and benefit. We did this, however, upon the distinct condition that thereafter all interest obligations arising from the contract should be liquidated promptly and every six months instead of every twelve months as agreed upon in said contract, to which the council of ministers, presided over by his Excellency the Vice-President, unanimously consented in the presence of said Schramme and the attorney of the Cauca Company, Mr. Victor Mallarino. Contrary to the stipulation set forth in the above-mentioned *libranzas* or orders on the custom houses, that they should be taken in payment of duties to the extent of fifty per cent., they were not directly accepted by the collectors of the custom houses, so that they were obliged to sell them to the merchants having to pay duties, at a heavy discount from their face value, and these *libranzas* were not fully redeemed until November, 1893, or after a delay of two years and four months from the time the repayment of the deposit became due. In discounts on said *libranzas* we lost $3,901.77 Col. This establishes clearly the second vital breach of the (1360) solemn obligations incurred by the Colombian Government under the contract.

We continued, nevertheless, pushing the construction of the railroad to the full extent that the supply of laborers would permit us, and during 1892 we established all over the country labor agencies at great expense to our company, paying heavy salaries to agents and bonuses to laborers in the shape of advances. Some of the agents brought together a considerable number of laborers and started them on the road to the seat of operations, but in many instances our men were arrested by local authorities on the ground that they were revolutionists, and had to return to their homes. A great many deserted during the journey, and in many instances the authorities refused to enforce the contract made with them when called upon to do so. All these efforts have cost the company considerable sums of money. Prior to this, seeing that laborers could not be procured to the extent desired in the country, we brought 250 laborers from Jamaica at a cost of at least $35 gold per head, but owing to the default on the part of the Government in furnishing us with

the necessary military protection as per Article 27 of the contract, these laborers, upon arrival at the seat of operations, deserted to the interior.

Mr. Schramme, who was at the time in Cali, had a large number of them arrested there and demanded their return to Buenaventura, and the enforcement of the contract made between the company and these laborers. The authorities refused to enforce the contract upon the ground that in accordance with the Colombian Constitution the courts could not compel a man to work, and that they, therefore, could only hold these men in prison at our expense until the advances had been repaid or a bond for the repayment would be furnished, a decision which, it is obvious, left Mr. Schramme no other choice than to abandon the prosecution.

Notwithstanding all these serious drawbacks the company never employed during these two years less than 300 to 400 (1361) workmen outside of the officers, engineers, firemen, etc.

The first payment of interest became due and was audited on January 1st, 1892, but while the correctness of our bill was acknowledged, payment for same was not made before November 26, 1893, in *libranzas*, showing a delay of about 26 months.

The second payment became due and was audited July 1st, 1892, which was also paid in *libranzas* on November 26, 1893, or after a default of 17 months on the part of the Colombian Government.

The third account was due and audited January 1st, 1893, but it was also paid in *libranzas* on November 26, 1893, a default of about 11 months.

The fourth account of interest became due and was audited January 1st, 1893, but only on November 26, 1893, *libranzas* were issued in payment of same, a default of 5 months.

The *libranzas* issued for all the above accounts, amounting to $47,962.07 gold, were issued at 156%, P., making a total of $122,782.50, Col. money. They were refused direct payment at the custom-houses of the Pacific from the 50% of their receipts pledged for the payment of said *libranzas* by Articles 7 and 10 of the contract, and we were therefore compelled to sell the same to merchants at an enormous discount. These *libranzas* were not fully redeemed until April, 1895, making an additional delay of about 16 months in the final liquidation of the amounts, or a total default of 3 years and three months. Exchange rates had risen in the mean time from 150% P. to 195% P., consequently our losses in the above transactions were as follows:

Discounts allowed merchants	$ 6,627 05
Loss in exchange, estimated	34,253 05

The fifth account of interest under the contract was due and

audited January 1st, 1894; draft upon the custom-house was issued September 20, 1894, a default of 8 months and 20 days.

The sixth account of interest was due and audited July 1st, 1894, and draft on custom-house was issued for same September (1362) 20th, 1894, a default of 2 months and 20 days.

The drafts issued for the last two accounts—viz., $108,877.50, Col. money—were not fully paid until August, 1895, causing a further default of 10 months in the final liquidation, or a total default of about 18 months. The above amount was issued at exchange rate of 176%; but, before its total conversion, the rate had risen to 200% P., causing an estimated loss to us of about $18,915.05 in exchange, and a loss in discounts of $4,761.05.

The seventh payment of interest became due and was audited January 1st, 1895, and drafts upon the custom-houses were issued for the same on October 22d, 1895, viz., $48,120.86 Col. money, a default of nearly 10 months, whilst its final liquidation was completed about March 1st, 1896, or a total of 14 months.

The eighth payment of interest became due and was audited July 1st, 1895, but payment was only made under contract (Exh. No. 1), January 23d, 1896, on the 28th of January, 1896, a default of about 7 months.

The ninth payment of interest became due January 1st, 1896, and was paid as the foregoing on January 28th.

The drafts for these two last payments, viz., $77,121 Col. money on the Pacific custom-houses were not finally liquidated until June, 1896. The above amount does not include a balance of about $10,000 due for interest in delay of payments up to January 1st, 1896, which still remains unpaid, although its payment was distinctly agreed to in the agreement of January 23d, 1896. This latter payment of January 28, 1896, though apparently prompt, was only forced from the Government through our refusal to agree to said contract unless said payment was made.

The delay in all of the above payments demonstrates conclusively the breach of contract on the part of the Colombian Government concerning the hypothecation of the 50% of the gross custom-house receipts of the Pacific Coast, because these, though distinctly pledged for the payment of interest in accordance with Article 10 of the contract, were, as it is already (1363) shown, not so applied, and were used by the Colombian Government for other purposes.

The interest due July 1st, 1896, viz., $15,675 Am. gold and due from July 1st, 1896, to date of delivery of the road to the Government, January 27, 1897, viz., $18,026.25 Am. gold, still remains unpaid, though proper demands were made for the payment thereof by the Cauca Company.

In order to demonstrate what the Colombian Government considers the equivalent of gold, it should be known to this commission that the largest part of the payments were made in Colombian currency of small denomination, and an important portion in nickel coin of 5 cents and 2½ cents denomination; for instance, a payment of $28,000 made by the custom-house of Buenaventura was made up approximately as follows:

In nickel (5 and 2½ ct. pcs.)	$3,700
In bills of 10 cents	18,000
In bills of 20 cents	1,300
In bills of $1	4,000
In bills of $5 and upwards	1,000

and so in most instances. We have also been compelled to accept considerable sums in bills of the State of Cauca Bank, which are not a legal tender and are worthless outside the State of Cauca, and they could not be used for the purpose of buying exchange. Were these payments an equivalent of gold as provided for in the concession?

By the above we have given conclusive proof that the government has been constantly, and is still, in default in its solemn obligations under the concession. These defaults on the part of the Government under Articles 4, 5, 7, and 10 of the contract gave us a clear right to suspend the work of construction, of which right we have not taken any advantage whatsoever. Up to the end of 1894 work was pushed as fast as the difficulties arising from the labor question and the defaults on the part of the Government above mentioned would permit, and even after (1364) the Colombian Congress in 1894 confiscated our property by Law 61, per Exh. No. 2, construction, though reduced, has constantly been carried on. The defaults of the Government also justly entitled us to an extension of time granted under the concession to finish the first section of the railroad—viz., from Buenaventura to Cali—and the Government, upon our representation of the facts, recognized this right by granting us an extension of two years, as per Exh. No. 3, which, however, though valid in law, was swept aside by Congress in its arbitrary decree No. 61 (Exh. 2), instigated by the demands of the Cauca people, who demanded confiscation upon the threat of revolution if Congress failed to so decree. Since the date of this decree of November, 1894, we have virtually been deprived of all our rights, and no financier could have been induced to invest one dollar in the Cauca railroad. This will be the more obvious, because the credit of the Republic of Colombia is next to nil, owing to the fact that the interest on the foreign debt has been defaulted for over 16 years, notwithstanding the comparatively small amount—say, not over $400,000—annually it would have required to satisfy the same, and thereby to re-establish its credit.

Furthermore, we were compelled to continue the heavy administration expenses.

All these facts are undeniable *prima facie* evidence of the flagrant breaches and defaults committed by the Colombian Government. And could a greater wrong be pointed out than the fact that in spite of the lawful extension of two years granted by the executive power invested with all the necessary authority, expiring October 26th, 1896, Congress arbitrarily set aside this act and confiscated our property in October, 1894? It is generally well known and can be fully proven that this arbitrary action of Congress was instigated solely by the people of the Cauca and especially their leading politicians. Had Congress considered the interest of the nation, it certainly would have paused before acceding to these threats, because the period of our administration had saved the nation some $2,400,000, for (1365) during the seven years of our administration the Government collected the 50% of the revenues of the Pacific custom-houses, amounting to $2,800,000, which had previously been allotted to the railroad, while it paid us only in the shape of subsidies during that time, about $360,000, whereby the nation was clearly benefited to the immense amount of over $2,400,000 Colombian currency.

During the five years of 1885 to 1890, on the other hand, every cent of the 50 % revenue and further sums out of the national treasury were paid into the so-called construction and maintenance of the Cauca railroad.

The same reasons which forced the rescission of the Cisneros contract prevailed in our case.

I quote from the report of the Minister of Fomento presented to the Congress of 1888.

" It appears strange that the enterprise of the Cauca railroad, which is intended to give life, wealth and prosperity to the Cauca Valley, meets with implacable enemies in the very vicinity of Buenaventura, and there is nothing more certain and censurable than such conduct. The concessionario (Cisneros), in view of the hostilities with which he has to combat, and owing to the frequent interruptions which have taken place in the payment of the custom-house dues destined to the carrying on of this enterprise, has proposed the rescission of the contract as the most adequate means to silence the acclamation of these malcontents, but it is, in my opinion, best to continue the contract.

" In this case I deem it necessary that, whilst this contract is in force, the Government should give decided help to the concessionario in protecting the national interest involved in said enterprise, examining the works whenever it should be deemed necessary, but furthering and backing the same with the utmost energy, as the only means to surround it with credit and

prestige, which it requires. It must be remembered that when the contract made with Smith was declared forfeited, and the (1366) penal bond of $20,000 was made effective and collected, it produced in the United States a severe prejudice against enterprises in this country, and in consequence our credit would suffer to that extent, in case of a rescission owing to the default in the obligations under the contract, that it would be difficult to find another contractor. It is evident that Mr. Cisneros finds himself compelled to accept the rescission of the contract against his wishes on account of the hostility of the very people who would be most benefited by this work, though he was fully recompensed by the Government."

This animosity has continued ever since, and has stirred up, by hundreds of lying telegrams, constant newspaper attacks and posters in the streets all over the country, such a feeling throughout the country against us that even right-minded and thinking men have not dared utter a word in our favor. An example thereof is the fact that our representative at Bogota, Don Victor Mallarino, a gentleman of the highest standing and character, expressed his determination to withdraw from the representation of the Cauca Company because his life was threatened. This fact he communicated also to the U. S. Minister, who will testify to it if called upon.

Immediately after the Act of Confiscation we notified the Colombian Government of our protest against its arbitrary action and denial of justice, and demanded, under Article 37 of the Concession the formation of a tribunal of arbitration to decide upon the legality of its action, and also made proper remonstrances at Washington before the late Secretary of State, Mr. Gresham (Exh. 4), who in turn forwarded same to our Minister at Bogota by wire. But all our remonstrances and frequent repeated requests for a speedy decision remained unanswered until October 25th, 1895, when by telegram we were summoned to appear at Bogota within thirty days from the 18th of October (date of the telegram) for the purpose of forming the tribunal of arbitration, and were notified that, failing to appear, judgment would be taken by default. It was a physical (1367) impossibility to reach Bogota before the first of December. Consequently, after the time set for the hearing we again invoked the intervention of our Government through Secretary Olney (Exh. 5), who at once, deeming the action of the Colombian Congress a denial of justice and therefore an action entitling us to diplomatic interference, in accordance with Article 37 of the Contract, demanded from the Colombian Government, through our Minister at Bogota, the necessary extension of time. This, as a matter of course, was promptly granted. Our company thereupon named Mr. J. L. Cherry its attorney and C. F. Schramme its arbitrator. They proceeded

by the first available steamer, November 2, 1895, to Bogota, and arrived there, after a quick journey, on about December 1, 1895. After notifying the Government of their readiness to arbitrate the legality of the "caducation," to their surprise, they found, in their negotiations with the authorities, as shown by the correspondence, that the Government was not ready to arbitrate, but desired to purchase the franchise and railway by an amicable arrangement. Upon the request of the Government, and especially upon the request of the U. S. Minister, various propositions to that end were submitted by said Cherry and Schramme, but after keeping them in attendance for nearly one month and a half the Government declared it required authority from Congress for further action, and therefore desired them to leave matters in *statu quo* until such authority could be obtained from Congress, which assembled during July, 1896. To this Cherry and Schramme objected unless the following conditions were agreed to:

First. The act of caducation should be suspended.

Second. Both parties should maintain their rights under the concession.

Third. Payment of interest accrued up to January 1st, 1896, and of back interest for delays.

Fourth. Payment of $15,000 gold for expenses incurred by each of the company's representatives.

They insisted that otherwise the arbitration under Article 37 of the Concession should proceed *forthwith*. These condi-
(1368) tions were accepted by the President only after forcible and urgent remonstrances by the U. S. Minister, with the exception of the payment of the expenses incurred by Cherry and Schramme, on the plea that the acknowledgment of such payment would be equal to a prejudgment of the case at issue, and, our representative agreeing, to waive this point for the time being, the agreement of January 23d, 1896 (Exh. No. 1), was entered into. This agreement has also been violated in that the amount of about $10,000 Colombian currency due us for the interest in arrears of payment has not been liquidated up to this day. All these arrangements could have been perfected in one week, but the Colombian Government saw fit to detain Cherry and Schramme in Bogota for nearly three months, and this in view of the peremptory call of the Government for them to appear within thirty days for arbitration.

In accordance with the agreement of January 23, 1896, Cherry and Schramme returned to Bogota August 2d, 1896, having left New York July 1st. They found upon their arrival that the greatest animosity prevailed against the concessionario and his concession, not only among the natives, but also among the foreign element, owing to the vile and untruthful statements which were distributed by all the leading newspapers

and papers especially established for that purpose by delegates sent from the Cauca. The question had already been discussed by the House of Representatives in secret sessions, and a bill had been passed ordering the Government to enforce the caducation of the concession through the Colombian courts. Cherry and Schramme, in view of the above mentioned base slanders and abuse, demanded at once that a committee of Congress be appointed to take proper testimony and to allow them to refute the falsehoods, as, having agreed with the Government that it should procure from Congress such authority, as it deemed expedient, and having furnished the Government with conclusive proof of the falsity of the slanders, they felt it was incompatible with their obligations to the Government to enter into (1369) a newspaper controversy. A request was also sent through the American Minister to the Vice-President to stop the publication of the aforesaid baseless slanders uttered by the papers in a semi-official capacity, the falseness of which the Government well knew. But both our requests for the committee to be appointed by Congress, as for the interference of the Government with such publications, were denied, the latter on the ground that the Constitution granted liberty of the press. Meanwhile the Minister in charge of our affairs requested us to submit such propositions for the sale of the railroad to the Colombian Government as we desired to make, always insisting that the concession and the road *must* revert back to the government. Against this assumption we energetically protested that we could not be compelled to rescind our concession and yield up the road, except of our own free will, or unless we were forced to do so by the adverse decision of an arbitration, to be held in accordance with Article 37 of the Concession, at the same time stating that we would prefer the continuance of the valuable concession, which we certainly knew could be the only decision of the arbitration. But, taking into consideration the unjustifiable animosity against us throughout the country, the hostile action of Congress and of the Government, as well as the fact that the people of the Cauca were determined to destroy our property if the Government did not comply with their demand to confiscate it and turn it over to them, and that they had given us tangible proof thereof by setting fire to and burning to the ground our main office and freight building at Buenaventura, with all their valuable contents, causing a loss of over $40,000, and that we had received letters threatening to throw our locomotives into the Dagua river; taking, as we say, all these facts into consideration, we reluctantly arrived at the conclusion that our only course would be to submit to the powerful forces against us in a strange country, where we were without friends. We therefore submitted to the Minister a number of propositions for an amicable settlement involving

(1370) the rescission of our concession and the transfer of our railroad to the Government. For five long months the Minister in charge of these negotiations detained us with arguments and the most unacceptable counter-propositions, so that finally we were compelled to demand, through our Minister, the formation of the tribunal of arbitration under Article 37 of the Concession. We demanded, too, that matters should remain in *statu quo* until further instructions could be had from our Government, as it was absolutely impossible to hold such an arbitration in Bogotá, in view of the inflamed state of the public mind.

Meanwhile the Senate had amended the House bill so that it authorized the President to enter into an amicable arrangement within thirty days of the date of that law (Exh. 6), and at the expiration of that time, on the 27th of November, at last the Vice-President himself took charge of the negotiations and entered into a preliminary amicable agreement (Exh. 7). This subsequently, on the 4th of January, 1897, after another long lapse of time of more than thirty days, was reduced to an *escritura publica* (Exh. No. 8) under which this honorable body now convenes.

I have gone into the details surrounding this transaction at great length, as I think it essential that the commissioners should know the history of this case. I have carefully refrained from animadversions except where I have called attention to a fact or a set of facts which in themselves showed a spirit of unfairness.

It may be asked, with some show of reason, why the Colombian Government should invite foreigners into the country, ask them to build a road, and when they got fairly started, in defiance of the laws which they themselves made, in defiance of the contracts which they themselves entered into, arbitrarily and without reason abrogate those laws and rescind those contracts as was the case when Congress and the Government autocratically passed the law of confiscation already referred to.

(1371) On the surface the Government had some justification for dissatisfaction with the promoters. The promoters had undertaken to build the road from the terminus of the old road to Cali within four years, and had failed to do so. No other ground of complaint could be urged; but, as a matter of fact, the Government never once, either in writing or orally, called upon this company to complete the road within the time limited; never once made any remonstrance to this company, either in writing or orally, threatening that if the road was not completed within the given time they would hold the company guilty of breach of contract; never once sent a commissioner or representative who declared that the company was in any respect in default; but, as a matter of fact, to this day there is no record of any kind claiming that this company had been in default.

Even the Law 60 of November 16, 1894 (Law of Confiscation), recites in Article 1st nothing more than the fact that Congress refuses to approve the Contract 98 of 1892, which was a refusal to approve of the extension of the four years' contract—two additional years—to October, 1896. It should be borne in mind in this connection, in order to understand the flagrant and high-handed outrage that was committed by the Government of Colombia, that under the original concession, if the Government of Colombia was in default in the payment of any moneys, such as interest moneys, &c., due to the Cauca Company, the term of four years within which the construction had to be completed was suspended, and only commenced to run again after the interest payments had been made, so that at no time had the term limited in the original concession within which the road had to be completed expired.

The unjustifiable character of the Law of 1894, which may be characterized as a law of spoliation, was tacitly acknowledged by the Government itself when it suspended the operation of this law, allowed the Cauca Company to remain in possession of the road in spite of the law, allowed the Cauca Company to operate the road and to collect the revenue therefrom in spite (1372) of the law. It is true that it may have put a provision in the act suspending the operation of the law of spoliation, that this forbearance on its part was not to be pleaded in any arbitration which might thereafter be had; but I do not wish to have the commission infer anything from the stated remarks which I have made on this subject, which would be in contravention of this latter provision, it having been put before you, by me, solely and only for the purpose of throwing light upon the different steps which were taken in the progress of this case.

As a matter of fact, what were the grievances of the Cauca Company?

First. They were obliged to, practically, reconstruct the old road which had been turned over to them, so as to make it fit and safe for traffic.

Next. Military protection, which, under the original concession, was guaranteed to them, was absolutely denied when requested.

Next. It was made as difficult as possible for them to procure labor, and, when they had procured it, their contracts were not enforced by the Government.

Next. The Government consistently, and in every instance in which interest was due to them, failed to pay it at the time it was due, often making the company wait for years before paying the installments due, and then paying, instead of in gold or its equivalent, as the contract called for, in depreciated currency, which the company could not use, except at great loss, and when stretched over a long period of time.

Next. The Government returns the $50,000 which this company had put up in gold, as an evidence of its good faith, and which should have been properly treated by this Government as a mere deposit, after a lapse of more than two years from the time that it was due to the company, and then, instead of paying this money, which was the property of the company, in gold or its equivalent, it pays again in depreciated currency, subjecting the company to heavy discounts when used.

Next. Without notice, without a demand of any kind, without a claim set forth that the company had been in default, (1373) in the most high-handed manner, the Government calmly confiscates, by act of its Congress and its Executive, property which had been duly paid for, which had been improved and extended by the company, very much in the romantic fashion of the highwayman of the last century, who under polite forms, robs his victim while heaping upon him the most courteous expressions of regard.

Next. The people of the Cauca deliberately burned down the buildings belonging to the company; then they threatened to derail the engines and cars which the company might send over the road; then they vilified, traduced and slandered the company's officials and representatives in every newspaper that is published in the Cauca or at the capital; issued the most scurrilous pamphlets, attacking the company and its officials, without a finger being raised or a thing being done by the Government to prevent or stop this course, or to establish the falsity of the charges made by these irresponsible sheets, although it had in its possession all the time the proofs that the charges were the basest lies. This Government sat by supinely and allowed this company to be slandered when it had in its possession and on its records the official reports of the commissioners sent out and appointed by it to examine and pass upon and measure the road as built by this company, and turned over by it to the Government, which official reports set forth that the 16½ kilometers were built in accordance with the specifications of the concession, and were in all respects satisfactory to the commission.

The utter falsity of these charges is best shown by the fact that after this arbitration had been decided upon and after the road had been turned over by this company to the Colombian Government, a commission appointed by that Government in which the Cauca Company was in nowise represented, made a report to the Government setting forth in detail an inventory of what had been turned over, and also giving the conclusions of the commission to the effect that the road was in good condition; that it had been extended 16½ kilometers; that in addi- (1374) tion there were seven more kilometers graded, and that great improvements had been made on the line under the

administration of the Cauca Company, and a complete survey of three different proposed lines had been delivered over to the Colombian Government by the Cauca Company at a cost to this company of $50,000, gold.

It may be asked why it should have taken so long for the Cauca Company to have constructed 16½ kilometers, and it may be inferred that the company was not sufficiently assiduous in the prosecution of its work considering what it had accomplished in so long a time.

It is hardly necessary for me to point out to the commission that if the labor cannot be obtained; if the *nervus rerum*, the money which was due to the company, instead of being paid regularly and in full, and according to a recognized standard of value is paid in dribblets at irregular intervals, in depreciated and dishonored tokens, instead of in gold; if, when the company attempts to sell its bonds in the European markets it is met with the threat of the English bondholders' committee, headed by Sir John Lubbock, that the creditors of Colombia would not allow the bonds of this or any other Colombian enterprise to be marketed in Europe until the discredited and dishonored obligations of the Colombian Government on which there was past due and unpaid interest for sixteen years had been arranged to the satisfaction of the creditors of the country, then indeed the sale of the bonds of such a company as the Cauca Company becomes an impossibility; and if, in addition to the facts enumerated, labor troubles, withholding of cash due, withholding of interest moneys, lack of credit of the country itself in which the enterprise is situated, is added the actual confiscation of the enterprise, then the question is answered in that no great, no important, no far-reaching work such as the building of a railroad, can under these circumstances be completed, and especially in a tropical country where nature itself wars against man with the greatest fierceness.

(1375) It is a marvel of marvels that with all the discouragements and all the obstacles that were thrown in the way of the promoters of this enterprise, any part of it should have been finished at any time.

It is not hard for persons familiar with the building of great works to realize from the state of facts as I have attempted to outline them that what should have been the cost was greatly increased, at least trebled, by the malevolent acts of a hostile Government.

It would give no fair notion of the expenditure of money to consider the question in its naked form, to wit: At what price can I construct 16½ kilometers of road and grade 7 additional kilometers? If a road at this length were to be constructed in the State of Illinois, a flat prairie road, no doubt it would cost very little, as there the rails, the ties, and the rolling

stock could be procured at first hand, the workmen could be had without trouble, and a full day's work gotten out of them; the laws would do everything in the world to protect the contractor and not to hamper and annoy him; the people themselves would look upon the enterprise with favor, and would do all that was possible to aid it. Therefore, an ocular inspection of the work that has been done would not give a fair notion of what the just claim of this company really amounts to.

All the facts and circumstances of the case should be taken into consideration, and when the language of the contracts which were made is carefully considered it will be found that the contracting parties distinctly had in mind the repayment to the Cauca Company by the decree of this commission of the moneys actually expended by it, not the moneys expended by it only for rails and ties, and rolling stock and earthworks, but the moneys expended upon the whole enterprise.

Before the present contract under which this commission is sitting was made, a preliminary contract was agreed upon between the parties which set forth that the commission might visit the scene of the operations of the company in Cauca, "if they deem it necessary," clearly showing that the parties in interest had in mind not a question of judging, simply and only (1376) what, under the most favorable circumstances, would be the cost of the extension of the Cauca road, but what, as a matter of fact, under the circumstances as they actually existed during the years 1890 to 1897, were actual *bona fide* outlays of this company.

Should there be any doubt upon this question as to what the contract under which this commission was appointed really meant, I will submit the evidence of Mr. McKinney, the United States Minister at Bogotá, and of Mr. C. F. Schramme, a member of the commission, who will testify, if the commission deems this essential, that several proposed contracts were submitted for ratification, which called for repayment to the Cauca Company of the moneys found to be due upon a valuation of the road; that Mr. Cherry and Mr. Schramme and the United States Minister rejected these proposed contracts, insisting that the final agreement should embody a provision calling for the repayment of the expenditures actually incurred, as a mere valuation of the road would never show a very considerable part of the expenses incurred, and which a mere inspection of the road would not reveal.

This company proposes to submit its claim to this commission in detail. It proposes to show that its books were carefully and accurately kept; that the entries were made from time to time, as occasion required, in the regular course of business, and vouchers for all payments will be submited, showing what the

payments were for, and, if the commission requires it, a detailed explanation of every claim.

Two accounts were kept—one in the New York office and one in the office of the company at Buenaventura, where the company always had trustworthy men to supervise the accounts, which were audited from time to time by the officers of the company. Unfortunately, the buildings of the company were razed to the ground by a fire of incendiary origin in January, 1896, immediately after the promulgation of the news that the Government had entered into an amicable arrangement of settlement with the Cauca Company, whereby all records, books, (1377) vouchers, papers, money to the extent of $25,000, and valuable instruments and maps were destroyed.

We will show that the office at Buenaventura drew on the New York office for funds from time to time as the same were required, and were paid by the New York office. The records and vouchers in Buenaventura, if it had not been for the fire, would show in detail the disbursement of these sums. In the absence of these records, which have been destroyed through no fault of this company, we will show by competent evidence of persons in the employ of the company how the money was expended at Buenaventura. The claim of this company amounts, with the interest up to date when this commission met, to *$830,188.74*, of which this company acknowledges the receipt on account, in conformity with the contract, of $200,000. This sum of $830,188.74 is made up as per Exhibit No. 9.

Outstanding obligations not included in the above, *$132,250.00*, represented by bond certificates. Making a total of *$962,438.74*.

In presenting the books of account I desire to call the attention of the commission to the fact that when the original concession was transferred by Mr. Cherry to the Cauca Company, the Cauca Company in turn made a contract for the construction of the road with a construction company, which was known as the "Colombian Construction and Improvement Company," which latter company owned all the stock of the Cauca Company. The two companies were, therefore, in effect, and for the purpose of this inquiry, one and the same entity. The books of the Colombian Construction and Improvement Company will therefore be introduced in evidence to show what the actual disbursements of the Cauca Company were.

Should this commission be in any doubt on any of the questions which have been touched upon in this opening presentation of the Cauca Company's case, the company is prepared to remove all doubt in relation thereto. It will be an easy matter to show that other lines built in the tropics under far more favorable conditions have cost very much more than this line (1378) has cost. It will not be difficult to show that in Colom-

bia itself similar cases have been adjudicated upon under circumstances not dissimilar from the one in question, where the award was even larger than is claimed in this case.

After all, the Cauca Company, despite its earnest protests, despite the fact that it was entirely willing to complete and finish this road to Cali, and to build further extensions, even after the Colombian Government had discarded all its rights, and had actually had a law passed despoiling it of its property, has been compelled to give up and hand over the existing road to the Government. That it did so was solely because it had no choice, and because it considered a lean promise better than a fat lawsuit.

If this were a case which could properly be brought before the tribunals which usually assess damages, this company would have a claim for millions of dollars.

It was deprived of a road thirty-seven and a half kilometers long, which it was operating at a profit; it had the exclusive right to extend this road for 300 miles, going through one of the richest valleys in the world which the great Humbolt justly named the "Italy of America"; it had a preferential right to extend beyond this for hundreds of miles connecting the largest cities of the Cauca and Antioquia with the Pacific, besides tapping gold and silver mines and the great coal mines of the Andes, being, so far as known, the only important deposit of coal on the Pacific side of South America, and in addition it surrendered twenty-four kilometers of public lands for each mile of road built on each side of the railway, as the same was constructed.

Had this company been allowed to complete its road and to avail itself of its franchises as granted, without interference, without being harrassed, without being deprived of the payments which were its just due, its promoters and owners would have owned one of the most valuable franchises that was ever granted to any corporation. It would be easy to show that, if the Colombian Government had fulfilled its just obligations,
(1379) capital, as much as might have been needed, would have been readily and easily obtained, and a great monument of the enterprise and thrift and foresight of American genius would have been reared up in the southern half of the Western Hemisphere.

As it is, against our strenuous protest, we have been compelled to agree to accept in lieu and place of this highly valuable concession a mere pittance, only the actual money spent, and we may surely ask that from this not a jot or tittle shall be deducted, for, with a full award of the amount claimed, those who had the foresight to project this great enterprise, the boldness to undertake it, the money to build it, whose hopes of brilliant consummation have been dashed by petty and malevolent hos-

tility, will only be reimbursed for their actual outlays. Confident that a careful and impartial scrutiny of the facts and circumstances of this case will lead to an award of all we claim, we respectfully lay this case before your honorable body.

(Sig.) MARCUS STINE,
Attorney and Representative of the
Cauca Company.

Analysis of Alleged Grounds of Complaint.

It is apparent that the purpose of the foregoing address or statement on behalf of the company is to set forth grounds in justification of the latter's contention that the Government defaulted under the terms of the concession and so waived its right to insist on a forfeiture of the road in accordance with the unequivocal terms of the 4th, 6th, 34th, 37th, and 39th articles of the concession. There has been no denial, and it has been conceded, that the company utterly failed to construct the road within the time required under Article 4th; no denial, and it is proven, that it failed to either forward or file plans, maps or profiles, as required by Article 6th; no claim that it gave notice (1380) of the assignment of the concession by Cherry to the Colombian Construction and Improvement Company, and no denial, but it is admitted, that it initiated claims under the concession by diplomatic intervention by the United States Government; nor is it disputed that a forfeiture, justified under any of the articles above specified, would divest the concessionary of all right, property and interest in or under that instrument and of all right in and title to the railroad in question. Under the provisions of the concession, as to forfeiture, and in view of the conceded acts and failures to act of the company, the only recourse of the latter, in order to avoid the conclusion that it had neither legal nor moral right to consideration at the hands of the Government, nor any ground for asking diplomatic action, was to allege and attempt to prove such defaults on the part of the Government as would deprive the latter of any right of forfeiture. To allege such grounds seems to be the main purpose of the address. To sustain such allegations there is an entire absence of proof. Three alleged grounds of excuse to the company are set up, and it will be proper to consider them in the order of their statement.

(1) Military and Police Protection.

It is claimed by the company that the Government failed to observe the provisions of the 27th Article of the Concession, in that it refused such military or police protection as it therein promised to give.

Upon this point it is sufficient to say that while the company has offered no proof of any such refusal, the Government (see Testimony, Vol. II., pp. 535-6), proved that there had never been any occasion for the giving of any protection whatever, and that, on the only occasion when protection was requested, it was promptly granted, though the occasion was one which did not require either military or police interference of any kind. As the 27th Article only provided that military or police protection should be provided for the "protection and safety of the persons and property of the employees, workmen, etc.," it is farcical to say that thereunder the Government could be required to seize and force runaway and dissatisfied workmen (1381) to keep or perform their labor contracts with the company, or that it could be required to "muzzle" the press of the country in order to save the company's officers from the public ridicule to which their paltering and inefficiency justly exposed them. There were constitutional reasons why the Government could not do either of these things, and there were civil courts in which the company could proceed. The suggestion that the company's officers were restrained from entering into newspaper controversies because of a sense of obligation to the Government is amusing, especially in view of Schramme's testimony of September 10th, 1897 (p.), that at Bogotá he openly and very vigorously denounced the Government for committing what he claimed were acts of gross wrong.

(2) Alleged Failure to Repay the $50,000 Deposit at the Time or in the Manner Provided.

By the 25th Article of the Concession the concessionary was required to deposit with the Government's agents the sum of fifty thousand dollars ($50,000) in gold, to be held as security for his faithful "performance of the obligations contracted." By the same article it was also provided that the Government should return said sum to the concessionary so soon as the latter should "legally prove" that he had "constructed a part of the road the value whereof shall be equivalent to the sum of two hundred thousand dollars in American gold."

By the 26th Article of the Concession it was provided that while said sum should remain on deposit the Government should "have the right to freely dispose" of it, "or to leave the same on deposit," in the first of which cases it should pay to the concessionary, at the end of six months, yearly interest at the rate of five per cent., "in American gold, or the equivalent thereof," and in the second of which cases the concessionary was only to receive whatever the bank in which the fund was deposited should allow thereon.

The provisions of said two articles are wholly definite and

(1382) without ambiguity of any kind. Taken together, the articles provide:

(1) That, as a condition precedent to the right to demand a return of the deposit, the concessionary was bound to "legally prove" that he had "constructed a part of the road the value whereof" should "be equivalent to two hundred thousand dollars in American gold";

(2) That the Government should "have the right to freely dispose" of the fund, or to leave it on deposit;

(3) That, if the Government employed or disposed of the fund, it should, semi-annually, pay interest thereon at the rate of 5 % per annum;

(4) That, if the Government should not use the fund, but should leave it on deposit, the concessionary should only be entitled to such interest as the bank in which the fund was deposited should allow.

This company never proved, legally or otherwise, that it had constructed the extent of road required to satisfy the condition precedent to the right to demand repayment, and there has been no attempt in this proceeding to prove that such proof was ever made. In point of fact, the evidence here is that the deposit was actually repaid before it became due irrespective of the question of such proof, for the only witness who testified on that point was the company's chief engineer, who was also its engineer in charge of construction, and he testified (testimony, p. 539) that the company had not complied with the condition, and had not built the requisite amount of road, even at the time of the return of the deposit, which was on April 2d, 1892.

It is true that the company claimed the return of the deposit (attempting to get credit on account of construction for mere repair work on the road which it had received and receipted for as constructed road), but the claim was rejected for three good reasons: "(1) That the company had not constructed the requisite amount of road to entitle it to the return of the deposit; (2) the Government had received no proof of any kind as to any construction, there being nothing but an informal claim (1383) presented, and (3) the company had refused to permit the Government to inspect its books, as required by the 21st Article of the Concession, though it kept detailed books of account at Buenaventura; and it had wholly failed to forward the detailed weekly reports, or any weekly reports required by the same article, thus trying to keep the Government in ignorance of the moneys expended and the work accomplished.

The best evidence of the company's bad faith and of its knowledge that it had no right to the return of the deposit until about the time of the repayment thereof is that on the 7th day of March, 1892, it entered into an agreement that such

deposit should be repaid *so soon as the Minister of Public Works should decide that the deposit had become payable.* In order that there shall be no misunderstanding as to the terms of the contract it is here inserted at length:

Contract made with Mr. James L. Cherry, relating to the construction of a railroad from Buenaventura to Manizales.

Numbered two hundred and fifty-four. In the municipality of Bogotá, Department of Cundinamarca, Republic of Colombia, on the seventh day of March of eighteen hundred and ninety-two, before me, Eustacio Ortega, Fourth Notary of this circuit, and in the presence of the instrumental witnesses, Messrs. Manuel M. de Narvaez and Francisco de P. Diago, males, both of age, and residing in the same circuit, of good standing, and having not any cause to prevent them from so acting, appeared Doctor Marcelino Arango and Mr. Victor Mallarino, both of age, males, and residing in the municipality, both personally known to me, and said:

That the former, Doctor Arango, in his capacity as Secretary of the Treasury, of which I hereby certify, authorized by His Excellency the President of the Republic, on one side; and the other the said Mr. Mallarino, as successor attorney of the "Cauca Company," as it appears from a public deed issued in his favor by the former attorney Mr. James L. Cherry, in the (1384) District of Buenaventura, Department of Cauca, bearing date of September 18th, 1891, before Adolfo Quintero, notary public, number 43; they have made the following contract:

First. As soon as the Minister of Public Works shall decide that Mr. James L. Cherry, or the person or company who has become his legal representative, be entitled to the amount of fifty thousand dollars, U. S. money, deposited by said Mr. Cherry in the banking-house of Messrs. M. Camacho, Roldán and Nephew, of New York, for the fulfillment of some of the conditions stipulated for the construction of the railroad from Buenaventura to Manizales, on the contract made on the twenty-seventh of August of eighteen hundred and ninety, and in compliance with the Law Sixteen of the same year, the Secretary of the Treasury Department will pay said sum in bonds or satisfactory drafts or notes in payment of fifty per cent. on importation duties of the Republic in the customs-houses located on the Pacific coast.

Second. The nominal value of bonds for this payment shall be considered at par as regards the value of the National Bank notes; and in payment of the fifty thousand dollars U. S. money, and the interests due to the same amount, bonds of nominal value shall be delivered equivalent to the fifty thousand dollars, adding to these the premium corresponding to drafts

on New York at the date on which the delivery shall be effected, such premium being determined by the banks of this city.

Third. The Government of the Republic will likewise pay in the same form described above, the five per cent. mentioned in Article Seventh of the contract whenever order of payment shall be issued by the Minister of Public Works. No registration fees are paid in accordance with Article Twelfth of the Thirty-nine Law of the twelfth of November of eighteen hundred and ninety.

The above written contract or deed was read to the parties concerned, which they approved and accepted, signing the same (1385) together with the witnesses in their presence and before me, all of which I hereby certify.

(Signed) MARCELINO ARANGO.
VICTOR MALLARINO.
MANUEL M. DE NARVAEZ.
FRANCISCO DE P. DIAGO.
EUSTACIO ORTEGA,
Fourth Notary.

This is an authenticated second copy of its originals written in two valid pages for the Treasury Department. Bogotá, date of its issuance.

EUSTACIO ORTEGA,
Fourth Notary.

Paper furnished and no fees paid.

ORTEGA.

It will be observed (1) that by the foregoing contract the deposit was not to be returned until the Minister of Public Works had decided that it had become payable; (2) that the repayment, as was specially agreed, was to be made in "bonds or satisfactory notes in payment of fifty per cent. on importation duties of the Republic, in the custom-houses located on the Pacific coast" (so much for the "Libranzas"); (3) that the difference between the actual and the par value of the libranzas (bonds or drafts) should be made up by adding additional libranzas to cover the current rate of exchange on New York, so that the repayment of principal and interest should be made by delivering libranzas of the market (gold) value of the principal and interest of the deposit at the date of *of* adjustment, and (4) that the 5 % interest on the $38,000 per kilometer of constructed and open road provided for in Article 7th of the Concession should also be paid "in the same form" "whenever order of payment" should "be issued by the Minister of Public Works." But it must be noted that this 5 % became payable only after the road had been *opened* and that the new road was

not opened until September, 1893. (See Testimony, Vol. I., pp. 288-304, 334-340.)

(1386) The Government faithfully kept all the terms of the agreement, and the deposit was fully repaid on the 2d day of April, 1892. The payment according to the company's engineer, Carter, was actually made a few weeks before the requisite amount of road had been constructed, even on the basis (unwarranted under the 25 Article of the Concession) that the sum of $38,000 should be adopted as the cost of construction per kilometer. Carter's testimony, the fact that the company never went beyond a mere request for repayment until it had, on the arbitrary basis of $38,000 per kilometer, constructed to about the equivalent of $200,000; the fact that the company refused an inspection of its books, the fact that it agreed to leave it to the Minister of Public Works to determine when the repayment should be made, and the fact that by the solemn agreement by which this adjustment was reached it was stipulated and provided that the principal and interest of the deposit and the 5 % interest to be paid on account of subsidy should be alike paid in libranzas, should forever dispose of the foolish and dishonest pretence that the Government was in default either at the time of payment of the deposit and its interest or as to the time when or the form of funds in which the 5 % subsidy, should be paid—that is, if there is any reason why the "highly influential and financially strong" gentlemen referred to in the address of the company's counsel should be expected to have any regard for the obligations of a contract. It must be always borne in mind that no part of the 5 % guaranteed subsidy would become payable until the road on which it was calculated had been actually opened to traffic.

While under the concession and under the contract of March 7th, 1892, the Government's position was absolutely right, and while at the hearing herein there was no attempt to prove that the company had done the amount of work required to entitle it to demand repayment (thus rendering further discussion unnecessary) it may be noted that a complete demonstration of the fact that the company, even on the unwarranted (1387) basis of $38,000 per kilometer, had not constructed such requisite amount of road, until the date, or slightly after the date of repayment of said deposit, will be found in the testimony of Mr. Carter, the company's engineer, and in his report of estimated work, &c. (See Testimony, pp. 288-304 and 334 to 340.)

It must be noted that there can be no dispute whatever upon the point that under the 25th Article of the Concession the company could not make any claim that moneys expended in repairing that part of the road which it had received from the Government as constructed road, should be allowed as moneys

expended on construction. This question was raised directly (see testimony, p. 329), and it was then held by the commission in substance that expenditures on such portions of the road could not be considered as having been made on construction. It must be also noted that when the company in the summer of 1891 first claimed the return of the deposit it based such claim upon the theory that it had the right for the purposes of the reclamation of the deposit to claim that work done in repairing the above-mentioned constructed road should be allowed to it as though such moneys had been expended on actual construction work. It must also be noted that in addition to this claim the company further claimed that the basis of $38,000 per kilometer should be adopted as the basis upon which cost of construction should be calculated. The Government rejected these claims (the $38,000 basis had relation to subsidy only) (Concession, Article 7), and finally the dispute was compromised by the agreement of Mar 7th, 1892, under which agreement the parties took a fresh start. It is important to note this fact, because it disposes of the claim that the Government was in default, either as to the time or the mode of payment of either the deposit or the interest. This agreement was a direct modification of any provision in the original concession to the effect that the receipts of the custom-houses should be pledged for the payment of the *libranzas*. This agreement of March 7th, 1872, (1388) made special provisions with respect to the *libranzas* to be paid by the Government, and there is no proof that these provisions were not lived up to by the latter. The agreement was doubtless a compromise agreement, wherein the disputes of the parties respecting the return of the deposit and the payment of interest were settled, the company giving up its claim that the Government was in default, and the Government waiving its right, under the concession, to withhold payment of the deposit and subsidy until the company had actually expended $200,000 in new construction. Viewed in any light, the contract of March 7th, 1892, shows a settlement of disputes as to repayment of deposit and the payment of interest, and so disposes of the company's baseless charges of default. The Government's position throughout was absolutely sound because the concession clearly and definitely provided that the deposit should only be returnable after the company had legally proved that it had constructed and opened to traffic road "the value" whereof should "be equivalent to $200,000, American gold," and it is clear to a demonstration that the company had not expended anything like the sum of $200,000 in new construction work at the time of the repayment of the deposit. Even at the time of the surrender of the concession, the company had only constructed the equivalent of K. 9. 866 of new road. This

appears from the stipulation of August 31st as well as by the uncontradicted testimony of Mr. Carter.

Interest (Guaranteed Subsidy).

As will be remembered, the concession provided that the Government by way of subsidy should pay interest at 5 % per annum, on $38,000 for each kilometer of road "constructed and put in operation." This $38,000 was an arbitrary sum and far exceeded the actual or reasonable cost of construction per kilometer, which did not exceed $22,500.

(1389) The 7th, 8th, 10th and 18th Articles of the Concession are those which relate to interest payments on account of the subsidy, and by referring to them it will be seen that the interest upon the $38,000 per kilometer basis was payable only upon road both constructed and put into operation by the concessionary; that it was only payable yearly; that the interest period on the $8,000 per kilometer basis of the 8th Article never began to run, and that so no interest on account of subsidy ever accrued in relation to the road between Buenaventura and Cordoba; that all the interest was payable in *libranzas* (Articles 7 and 10), if the Government so preferred; that the Government was entitled to certain deductions from the annual amount of payments to be made on the subsidy, which deductions were to be based on the gross revenues of the road (Article 18); and that delay in payment of interest was not to be an excuse for non-completion of the road within the "peremptory period of four years;" but was only penalized by the provision that such delay should be compensated (Article 10) by payment of interest on the delayed interest at the rate of 10% per annum (see Convention Articles 4, 5, 7, 8, 10 and 18). But the agreement of March 7th, '92, modified the provisions of the original concession in respect to method of payment.

The company's excuse that it was freed from the liability to forfeiture of the concession and road, because the Government had defaulted in the payment of principal and interest, or either, is wholly without any legal or moral foundation.

On the contrary, it can be demonstrated that the Government paid interest in advance of its maturity and in excess of the amounts due, as will be seen by the liquidation of the interest account, which will be given below.

As the concession provided that interest should be paid annually, in January, only upon the kilometers of road constructed by the concessionary and opened to traffic (Articles 7 and 10), it becomes important, before examining the question of (1390) interest, to know that the road had long been fully constructed and in operation from Buenaventura to Cordoba, a distance of 20 kilometers 240 meters, before the concessionary

obtained the concession; that the road had further been constructed, but not actually put in operation, from Cordoba, eastwardly, to K. 27. 100 M.; that the concessionary had accepted this latter portion and had receipted to the Government for it, as constructed road, so that that portion, equal to 6 K. 860 M., could never be considered as a factor in the computation of interest (subsidy) on the basis of the kilometers of road of the concessionary's own construction; and that the concessionary had received 2 K. 650 M. in a partly finished condition, the completion of the work on which was equal to full construction of 1 K. 570 M.

It is important to remember that when the concessionary took possession the road had long been in operation from Buenaventura on the Pacific Coast, eastwardly to Cordoba, and that *no opening of the new road to traffic occurred until September, 1893*, when for the first time that part of the road running from Cordoba, eastwardly, to San José was opened for traffic or put in operation. (Testimony, Vol. I., page 340.)

The following table of distances will aid in the comprehension of the interest calculation and the testimony:

FIRST TABLE.

Showing the distances affecting the interest calculation:

Total length of constructed road at surrender of Concession January 4, 1897.....		36 K. 740 M.
Buenaventura to Cordoba (old road in operation)	20 K. 240 M.	
Cordoba to San José (point to which traffic had to be *opened* before interest could be computed on any part of it).....	16 K. 500 M.	
		36 K. 500 M.

(1391) It is to be noted that it is important, in relation to calculation of interest, to know the distance from Cordoba to San José for the reason that payment of interest depended on the *opening* of road that had been *constructed* by the concessionary—to get interest he was bound to both *construct* and *open to traffic*—and that the only part of the road *opened* to traffic by the concessionary lay between Cordoba and San José, only part of which, however, was constructed by him. It must be noted, too, that while he was only entitled to interest from the time he opened the traffic to San José (so that the date, September, 1893, is important) he was not entitled to have the interest calculated on the basis of the entire distance from Cordoba to San José for the reason that he only constructed a part of the road between those points—though he opened it to traffic for the whole distance. This happened by reason of the fact that when he received

the road from the Government it had been fully completed to the point 27K. 100M., and partly completed from the last named point to K. 29.750 (a distance of partly completed road, which was finally completed by the concessionary, equal to 2K. 650M.). The concessionary's work of finishing this partly completed road was equal to the full construction of 1K. 570M. On opening the traffic to San José (September, 1893), the concessionary was entitled to interest as follows:

On partly constructed road, between 27K. 100M. and K. 29, 750M.	1 K., 570 M.
On fully constructed road from K. 29.750 to K. 36,740	6 K., 990 M.
Total as basis for interest calculation	8 K., 560 M.

It must be noted that the company, on surrender of the road to the government, turned over a small amount of unfinished road to the east of San José (equal to 1K. 306M. of completed road), but that no right existed to use that part as a factor in the calculation of interest, though it has its place in connection with the ascertainment of the total expenditures on con-
(1392) struction, which is a different matter, having no relevancy to the problem now under discussion (Art. 7).

GENERAL TABLE OF THE DISTANCES MENTIONED BY MR. CARTER.

Total length of line (kilometres) in operation at surrender, Buenaventura to San José	36.740
Total length of line at surrender, including finished and unfinished parts	41.740
Buenaventura to Cordoba	20.240
Cordoba to San Cipriano Bridge	6.798
San Cipriano Bridge (length)	0.062
San Cipriano Bridge to end of roadbed at time of concession (unfinished road)	2.650
End of roadbed (K. 29.750M.) to Caballete	0.430
Caballete to Sucre Nuevo	4.330
Sucre Nuevo to San José	2.230
San José to where work was stopped (unfinished road)	5.000
Total completed and uncompleted road	41.740

Table of some places along the line and of some dates at which completion (not opening to traffic) to such places occurred:

Buenaventura, K. 1 (beginning of road).
Cordoba, K. 20.240 (running when concession granted).
San Cipriano Bridge, K. 27.100 (do. do.).

Caballete, about K. 30 (July to September, 1891).
Piedras Piedras (K. 31).
Bodegas (K. 32).
Sucre Nuevo, K. 34.510 (July, 1892).
Dagua River (same kilometre as Sucre Nuevo) (Sept., 1893).
San José, K. 36.740 (Sept., 1893).

(1393) ANALYSIS OF INTEREST PAYMENTS.

The Cauca Company only had the right to collect interest on the following mileage (partly completed reduced to equality with fully constructed road):

Completion of partly constructed road from.....	K 27.100 to K.29.750	K.1.570
Constructed road from.....	K 29.750 to K.36.740	K.6.990
Total		K.8.560

The first portion of the road built by the company was between Kilometers 30 and 36. The station at San José is located at K. 36.740, and was opened to the public September 1st, 1893 (Testimony, Vol. I., 288 to 304 and 334 to 340).

The first term of liquidation should have been counted from that date to the 31st of December of same year, 1893, and consequently the first payment should have been made January, 1894, and not on January 1st, 1892, as claimed by the company. The stipulation of Article 7th of the agreement of 1890 very clearly expressed that the guaranteed interest of 5% on $38,000 per kilometre was to be paid on the kilometers built and in operation.

The Government calls attention to the fact that by reason of payments having been made on November 26, 1893; September 20, 1894; October 22d, 1895, and January 28th, 1896, the company has unduly received from the government and now holds interest for two years to which it was not entitled, the excess, with interest, being $109,308.59, for which no remittance has been made to the Government. The company unlawfully demanded and received interest from a period two years in advance of the time when it should have been paid. The delay claimed in the other payments is palpably based on this false period of calculation.

The company has no right to any guarantee from Cordoba to K 27.100, because it only repaired that section and did not construct it, as required by the guaranty clause of the concession subsidy; and, furthermore, the company repaid itself for the (1394) cost of repairs from the net proceeds of the road. The

works beyond San José cannot be computed for the purposes of interest, because they are neither complete nor continuous.

In contravention of the assertion by counsel for the company that interest should have been paid every six months, the Government begs attention to Article 7 of the contract, which expressly provides for a yearly liquidation, determined solely by the number of kilometers of road constructed and opened for traffic. There is no mention of payments at intervals of six months, and it was never intended that such payments should be made. The terms of this article are unequivocal and open to no question. The stipulation of Article 10th corroborates what is said in Article 7th, adding that the liquidation and payment would take place in the month of January each year, showing by that that only the first liquidation could be made for a less period than a year—that is, that the railway to San José having been opened for public service on the 1st of September, 1893, and the liquidation having to be made in January, 1894, it would be for four months, the rest continuing for the year as follows:

Interest from September 1st, 1893, to December 31st, 1893, or four months' interest on 8.560 K's	$ 5,421 35 Gold
Interest from January 1st, 1894, to December 31st, 1894, 12 months, interest on 8.560 kilometers	16,264 00
Interest from January 1st, 1895, to December 31st, 1895, 1 year on 8.560 kilometers.	16,264 00
Interest from January 1st, 1896, to December 31st, 1896, 1 year, on 8.560 kilometers.	16,264 00
	$54,213 35 Gold

By the examination of this account of interest, which is the true one according to the contract of 1890, and by comparing it (1395) with the statement of payment acknowledged by the Cauca representative in his claim, we arrive at the following figures:

Liquidation of guarantee account between the Government and the Cauca Company.

Showing 10% interest due by the company on guarantee moneys improperly claimed and collected.

Dr. 1893.		Paper C. C.	Gold.
Nov. 26.	By amount paid the Co., 156% Pm.	$122,782 50	$47,962 07
Dec. 31.	" 10% on $47,962.07 for 1 mo. 4 days....		452 97

1894.				
Sept. 20.	"	amount paid the Co., 176% Pm.	108,877 50	39,448 73
Dec. 31.	"	10% on $42,540.72 for 12 months.....	.....	4,254 07
Dec. 31.	"	10% on $39,448.73 for 3¾ months.....	.....	1,095 80
1895.				
Oct. 22.	"	amount paid the Co., 143% Pm.	48,120 86	19,802 82
Dec. 31.	"	10% on $65,725.40 for 12 months.....	.....	6,572 54
"	"	10% on $19,802.82 for 2¼ months.....	.....	371 30
1896.				
Jan. 28.	"	amount paid the Co., 130% Pm.	77,126 00	33,533 40
Dec. 31.	"	10% on $69,264.67 for 12 months.....	.....	6,926 46
"	"	10% on $33,533.40 for 11 mos. 3 days...	.....	3,101 78
				$163,521 94

(1396) NOTE.—Interest only calculated on principal.

Cr.				
1893.			Gold.	
Dec. 31.	To	interest from Sep. 1, '93, 4 mos. on 8.560 K at $1,900 p. a.....	$ 5,421 35	
1894.				
Dec. 31.	To	interest from Jan. 1, '94, 12 mos. on 8.560 K. at $1,900 p. a....	16,264 00	
1895.				
Dec. 31.	To	interest from Jan. 1, '95, 12 mos. on 8.560 K. at $1,900 p. a....	16,264 00	
1896.				
Dec. 31.	To	interest from January 1st, '95, 12 months on 8.560 K. at $1,900 p. a.	162 64	
	To	balance of principal and interest due by the company at 31st Dec., 1896	109,308 59	
				$163,521 94

Note 1:

Amounts paid by the Government	$140,747 02
Amounts actually due to the company	54,213 35
	$86,533 67
Plus interest on money improperly paid	22,774 92
Balance against company (gold)	$109,308 59

(1397) Note 2:

As the company has acknowledged the receipt of on account of guarantee and net revenue, and as the amount for principal paid by the Government is	$166,132 61 140,747 02
The balance is the net revenue on operation	$25,385 59

This varies somewhat from the amount of net revenue calculated on the estimates owing to the differences in the rates of exchange.

As to comment of the company in regard to the payment of the *libranzas* in small coin, it appears in evidence that Mr. Cherry went to Colombia in 1890, and that the *regime* of paper money was inaugurated in 1885. It certainly cannot be pretended that the company was ignorant of the legal-tender previous to the time when the contract herein was made; and, further, the question suggests itself, why, if this form of payment was repugnant, was it expressly provided for in the concession and in the contract of March 9, 1892? Does it appear in evidence that any other form of payment was suggested? Besides, the small denominations are known to be useful in paying off laborers.

The above demonstration shows conclusively that the claim of the company with regard to the payment of interest is as baseless as that relative to the deposit.

The learned attorney for the company has stated that Mr. Blum and Mr. C. F. Schramme have testified that the Government never disputed the account for interest sent in by the company, but this is not actually the case. As far back as the 14th January, 1896, his Excellency the Vice-President was aware of the over-payment, and on that day he wrote to Mr. McKinney as follows: "Mr. Cañon (Secretary of Finance) has examined the accounts, with the result that in his conception more interest has been paid to Mr. Cherry than he is entitled to for the years passed, which would imply a reduction in the
(1398) amount due for 1895." This quotation is from a translation of the letter in question made by Mr. C. F. Schramme,

and was put in by the company itself on July 22d, marked "Exhibit No. 38, Claimant" (see Vol. 1., pp. 335 and 336, and).

Confiscation.

The company's learned counsel takes the position that the Government waived its right of forfeiture because of the congressional declaration of forfeiture embodied in Law No. 60, of November 16, 1894, the theory being that Congress had no right to make such declaration, and that by declaring a forfeiture when no right to do so existed it justified the company in disregarding its agreement to complete the road "within the peremptory period of four years" stipulated in the 4th Article of the Concession. This would be a novel position, even though it were conceded that the congressional act was wholly without justification, for, under the scheme of the concession, the declaration of forfeiture could have no force unless accepted by the company or sustained in arbitration, it being expressly provided (Article 37) that all matters arising under the concession should be decided according to Colombian law, except the question of forfeiture, which latter question the concessionary should have the right to submit to arbitration, the decision in which should be final. The Government certainly could not lose any of its rights by simply making a case for arbitration. While the company declares that the Congress passed a law confiscating its franchise and property, it must be noted that the Government never attempted to take possession of the road nor to interfere with the company's control thereof. It merely declared the forfeiture of the concession, thus creating the very case foreseen and provided for in the concession itself, wherein the concessionary, should he so desire, should have the right to contest the validity of the declaration before arbitrators.

(1399) In order to understand the position of the parties it must be remembered that the Government of the Republic of Colombia is that of a constitutional republic; that its governmental functions or powers are vested in three separate and independent departments—the Legislative, Judicial and Executive—as in the United States, that the concession in question, like the acts providing for the construction of the transcontinental railways of the United States was granted by act of the Colombian Congress; that the President had no more power to modify or nullify such act than the President of the United States could have had to nullify the congressional acts for the construction of the transcontinental railways referred to; that, therefore, the pretended extension of time signed by the Colombian President was inoperative; that the company had utterly failed to build the road within the time agreed, and that the Colombian Congress, which alone had power under

the Constitution to act independently in respect of the concession, met but bi-ennially and sat from July to about November.

With these points in mind a reference to the respective steps in and under the matter of the concession from its creation to its extinguishment will suffice to show the falsity and unfounded character of the company's claim that the Government acted wrongfully.

(1) The concession was granted August 27th, 1890, and in it the company agreed, under strict penalty of forfeiture, to complete and open the railway within the peremptory period of four years.

(2) The company, having apparently realized only $213,875 on stock sales, and not then having been able to sell any bonds, and having undertaken to construct and equip about 140 kilometers of railway, the mere construction of which could not have been done for $20,000 gold per kilometer, saw the impossibility of keeping its contract (though still having nearly one-half of the original four years in which to complete the construction) and quickly after the adjournment of the Congress applied to the Executive for an extension of time in which to complete the work, pretending that it intended to import some (1400) 3,000 Chinese laborers in order to hasten construction (the laborers were never imported). On this application the Executive acted favorably, but without authority, and signed the so-called extension of time, dated December 10th, 1892, in which it was said that the company might import the 3,000 Chinamen referred to, and that it should have until the 18th day of October, 1896, within which to complete and open the railway. It is to be noted that this instrument recites that the *permission to import Chinamen* is granted in conformity with an act of Congress. (Law 64 of 1892.)

(3) On the assembling of Congress, in its very next biennial session—that is, in 1894—that body, seeing that the company was in gross default and that it could never keep its agreement, enacted Law 60 of November 16th, 1894, which disapproved of the so-called Executive extension, and directed the Government to declare the concession forfeited.

(4) Although the company remained in gross and increasing default, the Executive delayed action under the above law until October 16, 1895—nearly a whole year—when an Executive decree was made declaring the concession at an end. The company might now have demanded and insisted upon arbitrating the right of forfeiture, but it did not do so.

(5) Here the United States intervened, and in amicable compliance with its requests, the Government, consenting still further to indulge the defaulting and impecunious company, executed the Resolution of Suspension of January 23, 1896, whereby it suspended the operation of the Executive decree of

caducation of October 16th, 1895, until after Congress should have again assembled and should have decided whether or not to authorize the Executive to enter into an amicable settlement with the company, in default of which, arbitration was to be proceeded with (another recognition of the supremacy of the Congress in relation to the concession).

(6) When Congress again met—in 1896—the question of amicable settlement (which had been continuously urged by (1401) the American Minister, whose good offices were interested in behalf of the defaulting company) was taken up, and the President was authorized by Law 41 of October 20th, 1896, to settle all differences with the company "in an equitable manner"; that is, he was not to insist upon the strict forfeiture incurred, but was authorized to allow what he might consider equitable. But it must be noticed that in the same act Congress was careful to provide that, in case a just and convenient settlement were not arrived at, the Executive Power should proceed to bring about arbitration "in accordance with the resolution of January 23d last, accepted by James L. Cherry, attorney for the Cauca Company." Surely this does not sound as though the company were the party anxious to bring about arbitration, but rather that the Congress was insisting that there must be a final settlement either by agreement or by the arbitration under the agreement which Cherry had "accepted."

And in this same act Congress had further provided that in case such tribunal of arbitration should not be appointed "within thirty days," or, if appointed, should not comply with its mission "within sixty days more, the Government shall instruct the Attorney-General of the Nation to take without further delay the judicial action which may be proper to exact the fulfillment of the contract, together with indemnity for damages or solution for non-fulfillment of contract on the part of the concessionary, and also that he take such legal steps as will prevent illusory litigation." This language scarcely sounds as though the Government were in the wrong; on the contrary, its tone amply justifies the inference that somebody had appealed to Congress to authorize the Executive to waive strict forfeiture (it was then October, 1896, and construction had been practically abandoned since September, 1893), and to allow the defaulting company whatever he might deem fair. In determining upon what should be deemed equitable, the Executive was bound to take into account the fact that the company had not kept its contract; that it had not built the road which (1402) it had agreed to build; that it had agreed to construct a road that would have cost not less than $3,000,000, gold (see Schramme's testimony, September 10th); that it had expended less than $235,000 in both construction and equipment; that the nation had not only lost the fruits of the contract—the

opening of the Cauca Valley—but that the laboring people and business interests had lost the benefit of the expenditure in the country of about $3,000,000; that the company had been largely overpaid on account of subsidy, and that the Government had paid to the company as *bonus* over $140,000, gold, to help it perform its contract. The Executive was also to take into account the fact that the company was in legal default; that it was wholly unable to complete its contract, and that by reason of such default and inability to proceed the Government itself would be put to great expense and inconvenience in arranging for the granting of the concession to responsible persons or the carrying on of the work by governmental administration. On the other hand, the Executive was authorized to consider the circumstances under which the default had occurred, to remember that the United States had asked for favorable action, and, upon the whole case, to determine what allowance, if any, should be made for the results of the inexperience or ignorance of the promoters, for the fact that the public had refused to intrust them with funds, for the unwillingness of labor contractors to supply them with labor and to say, generally, what, if any, mitigating facts existed to justify a remission of any part of the full and agreed penalty of forfeiture stipulated in the concession. But the Executive had no power nor right to take into account the silly and unfounded claim that the Government was in default because it had refused to hold laboring men to involuntary service, or had declined to attempt against the Constitution of the country, to interfere with the liberty of the press. Even had the Government been in default in the payment of the interest which it had guaranteed—which was not the case—the Executive could not have (1403) given that much weight, for the penalty for such default was expressly provided and fixed in the concession itself, and was merely the payment of interest upon the interest which might be in default.

(7) Under all these circumstances, the Executive and the company agreed upon what should be deemed a "just and sole" indemnity to the latter for the pacific surrender of a contract which it was confessedly wholly unable to perform and to compensate it for peaceably delivering over a forfeited railway of which legal proceedings must sooner or later have deprived it.

Thus, we come to the Basis of Agreement and the convention, and it would require an ingenious and audacious mind to suggest and a distorted conscience to consent that the plain terms of either instrument should be held to justify the allowance to the company or its managers of anything beyond the sole equivalent of the expenditures in construction work and in equipment provided for in the convention.

In arriving at a final settlement the Executive evidently

took all the foregoing matters into serious and kindly consideration, and granted most favorable terms to the company, actuated, in all probability, by the dual desire—(1) to return to the company the moneys that it had actually expended in the construction work and equipment to be surrendered, and (2) to make manifest to the United States the friendly regard with which it was willing to entertain the amicable overtures of that Government.

But when the final agreement was made and signed, there was nothing left to compromise upon—the very terms of settlement had been agreed upon by the only parties who had any interests at stake, and nothing remained to be done except for the commission of experts to apply the standard of measurement provided by the parties themselves and to ascertain the amount of the "sole" and "just" indemnity to be allowed by finding out only what had been expended in the true construction work and equipment of the railway.

For the commission to volunteer its services by way of laboring to apply its own views of what would have been an (1404) equitable bargain would not only be wholly without warrant, but would be highly presumptuous and very indelicate. That is *not* the good service which the commission was requested to perform. While it was left to the honor of the commission to fairly appraise the works and equipment of the road and to ascertain and allow just what the company had expended therein and thereon, and no more, either party, no matter how great its confidence in the wisdom and integrity of the commission, might well decline to entrust to it the settlement of the questions involved by the application of its own ideas of justice or equity. Each party was the best judge of what it was willing to concede, and having by the final convention plainly expressed and limited its concession, would have the clear right to refuse to allow its compromise to be disturbed by the application of views not consistent with its own, and to decline to be bound by any decision or adjudication upon any matter not submitted to the honorable commission for determination.

It will be seen, therefore, that the company's attempt to excuse itself for default in construction by alleging an unlawful confiscation is without any justification either in law or morals. The Government never "confiscated" any of the company's property, though it would have been justified in insisting upon strict forfeiture. Instead of "confiscating" the company's property, the Government kindly delayed action in the face of absolute certainty that the company would never carry out its agreement, and finally, although it had paid to the company over $140,000, gold, as a *bonus*, magnanimously waived its rights under the concession, and agreed to pay for what it should receive without deduction of anything for loss, disap-

pointment, future trouble or expense or for the very large cash *bonus* which it had paid. Quite a vidid imagination is required to enable one to see "confiscation" in acts like these.

The only substantial "confiscation" visible in connection with the moneys or assets of the company will be appreciated after an attentive study of the accounts of Messrs. Cherry and (1405) Schramme. It appears from the company's own filed claim herein that Cherry got $247,000, and that Mr. Schramme got over $77,000 out of the company, while by the Barney account Cherry seems to have gotten $187,434.30 in cash, and to still have good claims against the company for $122,081.32, amounting in all to $309,515.02 against which he is entitled to credit for $33,236.92 for moneys paid out for the company, while Mr. Schramme modestly came in for only $68,488.99 cash, and has only $43,400 still due. The amounts still due, however, will, of course, come in "quite handy" against any sum which the company will receive in this proceeding. An attentive examination of this refutation of the charge that the Government has confiscated the property of the company and has committed acts of spoliation therein will convince any one who may be interested in the history of the company that the Government, at least, is not the one against whom the charge of spoliation or confiscation should be made. *It is an undeniable fact, however, that a very great proportion of the unfortunate company's funds has not been utilized in construction work!*

Liquidation.

Although the company's final acceptance of the Government's estimate of the proper cost of construction and equipment has disposed of the only question submitted to arbitration, it has been deemed wise to work a full liquidation of the expenditures of the company for construction, equipment, maintenance and operations and its receipts.

According to the convention, the problem to be solved is: How much has the Cauca Company expended on the construction and equipment of the railway, and how much for tools, etc., in existence at the time of the delivery of the railway to the Government?

In order to determine the exact value of the works of construction executed by the company, the Government engaged (1406) the services of Mr. M. P. Carter, under whose supervision the company's works were carried on, and of Mr. J. B. Dougherty, who formerly, under Mr. Cisneros, was twice in charge of the works while the railway was in the latter's hands.

The results of his computations, and those of Mr. Cisneros, are on the records of the commission, and are summarized on the following pages:

Estimate of Cost of Surveys.

From Caballete (K. 30.100) to End of Location (K. 43.100).

Baker, 1 month	$ 200	
Baker, passage from San Francisco	150	
Carter, 5 months	950	
Abadie, 5 months	250	
Brayer, 3 months	225	
Zorillas, 5 months	150	
L. Mann, 5 months	100	
Gutierrez, 7 months	525	
12 men, five months	1,008	
Board of engineers, etc	642	
		$4,200
Survey to Cali, Party No. 1:		
Carter, 9 months at $250	$2,250	
Shaw, 9 months at 110	990	
Boyle, 9 months at 100	900	
Bozosa, 6 months at 125	750	
12 men, 9 months at 15	1,620	
12 passages from New York	300	
Board of engineers, 9 mos. at $150	1,350	
Camp equipment, instruments, etc	600	
1 horse	100	
(1407)		$8,860
Survey to Cali, Party No. 2:		
Burgess, 5 months at $200	$1,000	
Wilson, 5 months at 150	750	
Wilson, 4 months at 200	800	
Murphy, 5 months at 125	625	
Murphy, 4 months at 150	600	
Hall, 4 months at 150	600	
12 men, 9 months at 15	1,620	
Camp equipment, instruments	600	
3 horses	250	
Passage of 4 engineers from New York to Buenaventura at $150	600	
Board of engineers, 9 mos. at $150	1,350	
		$ 8,795
Wilson, 1 Mo. work in United States	$ 200	
Kalb, 2 Mos. work in Colombia	300	
Passage to Buenaventura	150	
		650
		$22,505
Add for local administration		300
		$22,805

Estimate of Completing the Road from End of Track (K. 27.100), to the End of the Grading (K. 29.750). Distance, 2,650 Kilometers.

	Col. Cur.	Gold.
Clearing:		
2,650 K. at $300.....	$ 795 00	$ 397 50
Grading:		
5,000 C. Y. Conglomerate at $2.20.	12,000 00	6,000 00
1,000 C. Y. Loose rock at 80c.....	800 00	400 00
400 C. Y. Clay & gravel at 40c..	160 00	80 00
Cross Ties:		
1,800 per K., 2.650 K., 4,770; 4,770 ties at 50c..... (1408)	2,385 00	1,192 50
Ballast:		
7,300 C. Y. per K. x 2.650 K., 1,934½ C. Y. at $1.50.....	2,901 75	1,450 87
Wooden Trestle Bridges:		
625 lineal feet at $15.00.....	9,375 00	4,687 50
Track Laying:		
2,650 kilometers at $1,000.....	2,650 00	1,325 00
Supervision, transportation and incidental expenses	6,000 00	3,000 00
Iron Bridge:		
At San Cipriano	24,159 82	12,078 91
Note: Local administration, shop expenses, salaries of employees on construction, their travelling expenses and maintenance, explosives and tools.....	20,078 60	10,039 30
	$ 81,305 16	$ 40,652 58

Note: Exchange in 1891, 100 % premium.

Estimate of Cost of Construction from End of Grading (K. 29.750) to San Jose (K. 36.740). Distance, 6.990 Kilometers.

Clearing:	*Col. Cur.*	*Gold.*	*Per Cent.*
6.990 K. at $500.....	$ 3,425 00	$ 1,680 30	1.72
Grading:			
30,000 C. Y. Conglomerate, at $2.20.....	66,000 00		
23,600 C. Y. Loose rock, at 80c.....	18,880 00		
20,000 C. Y. Earth at 40c.	8,000 00	44,653 85	45.80
73,600 c. y.			

(1409)

Bridges:			
2,100 lineal ft. wooden trestle at $15.00.....	31,500 00	15,144 23	15.53
Sucre iron bridge.....	20,791 91	9,996 11	10.26
Cross Ties:			
1,800 per K. x 6,990: 12,582 ties at 55c.....	6,920 10	3,326 97	3.41
Ballast:			
370 C. Y. per K. x 6,990: 5,102 C. Y. at $1.50..	7,654 05	3,679 83	3.78
Track Laying:			
6.990 K. at $1,000.....	6,990 00	3,360 37	3.43
Rails and Fastenings:			
236¼ tons imported at $76.98 C. C. or $37.01 gold	18,186 70	8,743 62	
35 8-10 tons delivered by Gov't at $7.77 C. C. or $3.73½ gold.....	278 16	133 70	9.11
Superintendence:			
Transportation and incidental expenses	14,000 00	6,730 97	6.96
San José buildings.....	6,481 28	3,116 00	
	$209,177 20	$100,565 95	
Local Administration, shop expenses, salaries of employees on construction, their travelling expenses and maintenance, explosives and tools	68,599 64	32,980 60	
(1410)	$277,777 84	$133,546 55	100.00

Exchange at 108 % premium.

Estimate of Work Done East of San Jose.

Clearing:	
6,300 kilometers at $300.....	$ 1,890 C. C.
Grading:	
5,550 C. Y. Conglomerate at $2.20.....	12,100 C. C.
3,000 C. Y. Loose rock at 80c.....	2,400 "
20,420 C. Y. Clay at 40c.....	8,168 "
Superintendence, transportation and incidental expenses	2,000 "
	$26,558 00 C. C.

Exchange at 130 %	$11,542 61	gold.
Local administration, salaries employees on construction, their travelling expenses and maintenance, explosives and tools	3,785 40	"
	$15,328 01	"

The grading beyond San José is partly completed for a distance of about five (5) kilometers. Refer to official profile.

(1411) **Equipment.**

LOCOMOTIVES.

Locomotive "Cauca":

Cost, taken from page one of claim	$	7,267 00
Freight, 415 tons at $25		1,037 50
Add for lighterage and placing on track		1,000 00
	$	9,304 50

Locomotive "Dagua":

Supposed cost (275 tons at $180)	$	4,860 00
Freight, 275 tons at $25		687 50
Add for lighterage and placing on track		800 00
	$	6,347 50

NOTE: For weight, see Exhibit Custom-House Report.

CARS AND TRUCKS.

Passenger car, taken from claim, page 6	$	2,525 00
Car trucks, taken from claim, page 7		1,900 00
Cattle car, estimated		550 00
The total weight of the above is supposed to be 30 tons.		
Freight, 30 tons at $25		750 00
Landing at Buenaventura		200 00
	$	5,925 00

SUMMARY OF CONSTRUCTION.

Surveys	$ 22,805 00	
Completion to K. 29,750	40,652 58	
New work from K. 29,750 to San José, K. 36,740	133,546 55	
Work beyond San José	15,328 01	
Total cost of construction		$212,332 14

(1412) SUMMARY OF EQUIPMENT.

Locomotive "Cauca"	$ 9,304 50	
Locomotive "Dagua"	6,347 50	
Cars and trucks	5,925 00	
Total cost of equipment		$ 21,577 00
Total estimated expenditure on construction and equipment		$233,909 14

The amount granted on behalf of the Government as expenditure on construction works and in equipment is $233,909.14, which, after many discussions and checks, was accepted by the representatives of the Cauca Company in the meeting of August 31, 1897. (See page 763.)

The representative of the Cauca Company accepted also the estimate of operation, including maintenance, which is as follows:

SUMMARY OF OFFICE, TRAIN AND SHOP EXPENSES, COST OF TIES AND BRIDGES, TIMBER AND ALL OTHER EXPENSES OF ADMINISTRATION AT BUENAVENTURA FOR SIX YEARS.

Date.	Salaries & Office Exp. Buenaventura.	Wages for track and Bridges.	Train Expenses.	Shop Expenses.	Renewing Ties.	Timber for Bridge Repairs.
1891	$7,390	$7,632	$5,070	$5,828	$3,033	$2,436 33
1892	7,370	7,752	4,950	6,428	3,033	2,436 33
1893	7,270	15,901	5,315	3,156	3,033	2,436 33
1894	9,456	13,600	5,452	2,752	3,033	2,436 33
1895	6,580	13,344	5,452	2,752	3,033	2,436 33
1896	6,580	13,344	5,452	2,752	3,033	2,436 33
	$44,646	$71,573	$31,691	$23,668	$18,198	$14,618 00

(1413)

Date.	Total Expenses Per Year.	Receipts Per Year.	Percentage of Expenses to Gross Earnings.
1891	$31,389 34	$25,062 66	125%
1892	31,069 34	30,118 02	106%
1893	37,111 33	39,583 12	94%
1894	36,729 33	46,466 09	79%
1895	33,597 33	46,466 09	72%
1896	33,597 33	46,466 09	72%
	$204,394 00	$234,162 07	

NOTE.—Exchange calculated at 133% premium.

NOTE.—Traffic operation from Buenaventura to Cordoba commenced January 1, 1891.

Traffic operation from Buenaventura to San José commenced Sept. 1, 1893.

Gross receipts for traffic for six years (gold)			$234,162 07
Gross expenses of traffic for 6 years (gold)	$204,392 16		
Less ½ salary and administration expenses for '91, '92, '93, which are chargeable to construction	$11,015 00		
Less ½ shop expenses during '91, '92, '93, chargeable to construction	7,706 00		
		18,721 00	
		$185,671 16	
Repair of track K. 20.240 to K. 27.100.	$19,367 00		
Repair of San Cipriano wooden bridge,	5,000 00		
330.74 tons of 40-lb. steel rails at $37.01,	12,241 07		
79.63 tons of 52-lb. rails at $32.50	2,588 31		
		39,196 38	
Balance		9,294 53	
		$234,162 07	$234,162 07

Balance to the credit of the Government		$ 9,294 53
As taken from the statement, the gross revenue for traffic amounted to		234,162 07
Plus amount credited for expenses of administration chargeable to construction, which has been debited to operation of the road		18,721 00
		$252,883 07

(1414)

The expenses of operation, including maintenance, appear as	$204,392 16	
Plus amount expended on repair of line from K. 20.240 to K. 27.100	19,376 00	
Plus amount expended in repair of San Cipriano wooden bridge	5,000 00	
Plus for 330 tons of 40-lb. rails between Buenaventura and Cordoba	12,241 07	

Plus for 79.63 tons 52-lb. rails used in the same locality	2,588 31	
		$243,588 54
Leaving a balance of		$ 9,294 53

In a letter or report of December 1st, 1893, to the Board of Directors, Mr. Cherry claims to be able to operate the Cauca railway for 40 % of its gross receipts, but the statement here before the commission flatly contradicts that, because in none of the six years has the percentage been less than 72 %.

In the same letter of Mr. Cherry the commission might find another contradiction, because he stated that during the thirty-four months of operation,

The gross revenue was		$87,084 35
That the expenditure on repairs was	$56,500	
And operation expenses were	28,840	
		85,340 00
Leaving as net profit		$ 1,744 00

Clearly showing that the percentage of the expenses to the gross revenue was 98 %.

According to "Poor's Manual of Railways of the United States" in 1895:

(1415) The gross earnings of the railways here were		$817,611,710
The operating expenses, including maintenance were		566,463,084
Net revenue		$251,148,626

The percentage of expenses to gross revenue being 69 2-10%.

The Carter estimates show the details of the expenditures on operation, including repairs.

The greatest difficulty experienced by the representative of the Government in the way of adjusting the accounts for the construction and equipment of the railway was caused through the lack of proper method on the part of the company in keeping their accounts without discriminating between the expenditures for construction and those for operation in general, the lack of proper information before us, and of vouchers to verify the Buenaventura accounts. To arrive at the results already adduced, a great amount of comparison, expert estimation and remodelling has been necessary. The lack of method has, as is quite natural, led to inaccuracies and confusion in the company's accounts. The proof of this assertion is found in the fact that the books of the company show figures different from those of Mr. Cherry, the general manager and president, and

that the figures of both Mr. Cherry and the books differ from those of the local manager, Mr. Blum.

Mr. Blum, for instance, testified that the average number of men employed on construction was never less than 300 to 400, while from the company's pay-rolls it appears that

For 1891 there was an average of 172 men.
For 1892 there was an average of 234 men.
For 1893 there was an average of 72 men.

Mr. Blum testified, first, that the remittances from Buenaventura to the New York office were about $120,000, gold; possibly $130,000, and he afterwards said $140,000, while the (1416) books of the Cauca Company show $166,132.

Mr. Blum testified that the gross earnings of the railway in six years amounted to $270,000, C. C., and the operating expenses for the same period $320,000, while Mr. Schramme has stated that the gross revenue was $248,000 in gold; and by the Government's detailed account it appears that:

The gross revenue was	$252,883 07
And the expenditures	243,588 54
Leaving as net revenue in six years	$ 9,294 54

or $1,549 per year.

According to Mr. Blum's statement the railway operation left a loss of $50,000, C. C., or $25,000, gold, in six years. According to the representative of the Cauca Company the company was running the railway at a profit; and, according to Mr. Cherry, during the first thirty-four months,

The gross earnings were	$87,084
The expenses	85,340
And the net revenue	$ 1,744

Which makes the net revenue for a year $615.60, which amount does not cover the wear and tear of the railway and rolling stock, nor even does the amount of $1,549 (the yearly net revenue obtained from the Government's accounts) cover the wear and tear; and, in spite of this, the representative of the Cauca Company states that the company could work the railway at a profit.

To support such baseless assertions, Mr. C. F. Schramme has testified that the traffic of the railway increased constantly, but said testimony is completely incorrect. The Carter exhibits show that the number of tons of freight per year, constituting the principal source of traffic, was 4,732 tons. The accuracy of the figure is unquestionable, because it is taken from an official

document framed from the accounts of the mule road, and
(1417) because based on that figure, our calculation gives for gross revenue about $4,000 more than what the Cauca Company has declared it to be.

Taking now the Cisneros report on the Cauca railway in 1878, which document has been introduced in evidence by the Cauca Company: On page 36 it can be seen that the bases of a calculation for probable traffic was 4,818 tons a year, and on page 35 it is noticeable that that information was taken from the "Annual Statistics" (pp. 181 and 186), and official Government document for 1874; therefore, it is clearly demonstrated that the present traffic is the same as it was twenty-three years ago.

When said report was written, Mr. Cisneros assumed that once the railway was built the traffic would increase in the proportion of one to four. This he based on the experience of other countries, but in a few years after 1878 (1884) he discovered that in Colombia the experience of other countries was not a safe guide. In operating *La Dorada* railway, constructed and operated by himself, and opened for public service in October of 1884, the traffic over the railway proved to be no larger than that by mules and rafts. Investigation disclosed the cause, and it was found that the lack of increase of traffic was owing to the fact that there had been no immigration into the territory opened by the railway, nor, in fact, any immigration whatever into Colombia.

The reason why capitalists cannot be induced to invest in an enterprise like that of the Cauca Company is the lack of traffic to feed the railway, because, without traffic, the invested capital can find no remuneration. For these reasons the Cauca Company failed to raise capital. For the same reason Mr. Cisneros failed to raise capital from public subscription, although he succeeded in doing so by private means; and, as private capital was very dear, he was glad to have his concession rescinded, although it was a far better one than that of the Cauca Company. Before that Mr. Smith had failed, and for the very same reason.

To attribute the failure of the company to the Government of Colombia is but a sensational means intended to preju-
(1418) dice the commissioners against the Government, and to impress upon them the propriety of dealing, in this case, in a sense of supposed equity in favor of the concessionaires, although they are at fault in every instance, as will be proved.

Coming again to the construction account and to the conflicting reports, it appears that Mr. Cherry in his report of

December, 1893, estimated the cost of construction at $431,390 00

And that Mr. Barney fixeds said construction account, according to the information from the company's books, at 670,789 08

Reducing to $308,559 41

What he called construction, equipment and other expenses applicable to the physical work of the road. The Government's estimate for construction and equipment being in total.. 233,909 14

Difference compared with Mr. Cherry's report.... 197,480 86

Difference compared with the $670,789.08 in Mr. Barney's report 436,880 84

Difference compared with the $308,559.41 above mentioned 74,650 27

Said differences arise from having kept the construction and the operation expenses together, and also because of the insertion of items which do not appertain to either construction or operation. The above $74,650.27 represent the operating expenses of the first 34 months, less the $18,721 credited to construction.

The Government's figures about the appraising of the works done and the estimate as to the cost of the construction amounting to..... $233,909 14

having been finally accepted as correct by the representative of the Cauca Company, it only remains for the commission, as has been agreed upon, to estimate the value of the material that (1419) the Cauca Company has employed in construction, and has been given credit for in the estimates, and which the company received from the Government in 1891. Assuming, for the sake of argument, that the value of the said material be $20,000, gold, the final liquidation will be as follows:

	Dr.	Cr.
For construction and equipment...		$233,909 14
Cash paid by the Government....	$200,000 00	
Value of material employed.....	20,000 00	
Balance due to the company.....	13,909 14	
	$233,909 14	$233,909 14

As it has been established that the length of railway built by the company is K. 9.866, the $233,909.14 amounts to $23,709 per kilometer (inclusive of equipment).

Having arrived at this conclusion, it is advisible to make an examination of the general financial affairs of this company.

According to Mr. Barney's report the company has received in cash as follows:

Capital stock paid up	$213,875 00
Bond subscription paid	124,750 02
Making a total of	$338,625 02
Deducting from that the amount expended in construction and equipment	233,909 14
Leaving a balance on hand of	$104,715 88
The company received from Buenaventura in the way of guarantee and net revenue	$166,132 61
And in cash at Bogotá	200,000 00
Making a total in the hands of company	$470,848 49
(1420) Which is sufficient to enable the company to pay back the capital stock and the bonds subscribed, viz.:	338,625 02
As shown above and still retain	$132,223 47
According to Mr. Barney, the interest paid on bonds was	30,626 13
Therefore there is a net balance in the hands of the company of	$101,597 34
After having paid the said	30,626 13
Which amount is ample for the payment of office expenses (New York) and salaries and travelling expenses of Messrs. Cherry and Schramme, which by no means exceed	60,000 00

This last demonstration confirms our interpretation of the convention of January 4th, 1897, by which convention, as we contend, the investigation is limited to the expenditures upon construction and equipment.

The Government having waived any claim to the amounts received by the company in the shape of guarantee and net revenue, the latter had ample means left in hand to meet all its obligations, and even to have a balance in its favor.

In conclusion, independently of the material delivered by the Government to the Cauca Company and employed by them on the construction of the railway for which they have been credited, the company has acknowledged the receipt in the shape of guarantee and net revenue of | $166,132 61
And in cash | 200,000 00
Making a total of | $366,132 61

On the other hand, it has been clearly proved that the amount of work done by the Colombian Construction and Improvement Company on (1421) behalf of the Cauca Company is represented by K. 9.866, which means that the amount received by the company is equal to, per kilometer.....$ 37,110 00

The Cauca Company, on different occasions, had proposed to the Government to continue the railway as contractors at a round sum of $30,000 per kilometer, and it is therefore evident that, if they thought that this amount would have covered all their expense in Colombia and abroad and still have left a profit, their profit has been larger, inasmuch as the Government, as it has been demonstrated, has paid them for the work done at the rate of $37,110 per kilometer, and, as a matter of fact, the said payment is a clear proof of the equity with which the Government of Colombia has proceeded, and of the handsome benefit the company has derived from the concession and the liquidation of January 4th, 1897, limited though it is to the local works performed on the Cauca railway.

To make this statement more conclusive, I should say that, in spite of the estimate of.....$233,909 14
being very liberal, it shows the cost of construction and equipment as being..... 23,709 00
per kilometer, which figure would leave the company (exclusive of rolling stock) a margin of profit on the $30,000 per kilometer, for which price it proposed to the Government to build the road before the convention of January 4th was signed; and the best proof that this estimate $233,909.14 is very liberal is the fact that it was accepted by the representative of the Cauca Company, thus practically settling the matter to be arbitrated.

Had the convention of January 4th been intended to secure to the Cauca Company any expenses beyond those incurred locally it would have been necessary to credit the Government with all the moneys paid by them to the company, which would have resulted as follows:

Acknowledged by the company in the shape of (1422) guarantee and net revenue.....	$166,132 61
Cash	200,000 00
	$366,132 61
Accepted estimate of cost of construction and equipment	233,909 14
Leaving a balance in favor of the Government of..	$132,223 47

And it would have been necessary then to have had a great

deal of investigation about the expenditure on administration in New York, the personal expenses of Cherry and Schramme, the transfer of the concession and the financial operations of the company in order to ascertain what, if any, amounts with regard to these items should be credited to the company, inasmuch as there are items claimed without vouchers to an amount of over $600,000. The representative of the Government has not questioned any of said items, because in his view they are entirely outside of the scope of the convention.

Another way to look at the meaning of the convention is by taking into consideration that, by Article 7th of the concession, both parties agreed to estimate the price of a kilometer, for the sake of guaranteed interest, in $38,000; and by Article 9th of the same Concession it was agreed that in said price of $38,000 per kilometer, were included; preliminary plans and location, sidings and all other accessories required by the railway, adding "so that whatever be disbursed on such work shall also bear no more interest and have no greater guarantee than that which corresponds to the kilometer where the same are located."

Then: We have seen that the company has received from the Government, independently of material in the shape of guarantee and net revenue..... $166,132 61
And in cash..... 200,000 00

$366,132 61

(1423) That this amount distributed into the 9 K. 866 built by the Cauca Company gives $37,040 per kilometer, leaving to $38,000 the small difference of $960; therefore, if the Cauca Company agreed with the Government in 1890 that the price of a kilometer should be $38,000, all included; and if later on it proposes to build the railway for $30,000 per kilometer, it is evident that what said company has received already is the most proper compensation it can expect, and as we have arrived at that compensation by the only fair and reasonable interpretation of the agreement of January 4th, our views are perfectly warranted.

In dismissing the question of the proper cost of construction, it may be well to note that Mr. Scramme testified at the hearing of September 10, 1897, that the road from Cordoba to Cali was 160 kilometers in length, and that the company could have completed it for $3,000,000. It is perfectly clear that this was his language, and the context shows that he meant to say just what he did say. Was his statement merely reckless or did he think that the railway could be built for $12,500 per kilometer?

(1424) **Points.**

I.

The present honorable commission is a court of strictly limited jurisdiction. It has no power except that which is specially granted in the instrument which created it.

II.

The proceedings of a court of limited jurisdiction in a matter of which it has no jurisdiction, are absolutely void and bind no one.

III.

The only power or jurisdiction granted to the present honorable commission is that of ascertaining the *bona fide* expenditures of the Cauca Company in construction work done upon the Cauca railway and for material imported for use thereon.

In ascertaining these expenditures the honorable commission must keep strictly within the limitations of the convention, for a decision predicated upon a point not submitted to arbitration as well as an award arrived at by the employment of an unauthorized standard of measurement would be of no binding force, and instead of settling the matter submitted, would only serve as the basis for new controversies.

(1425) IV.

The matter submitted to the honorable commission for action does not call for any examination of the conduct or positions of the parties to this proceeding at any time prior to the execution of the convention in and by which they agreed upon a settlement of all disputes between them. To go into such an examination would be equivalent to a declaration that the honorable commission had a right to revise the bargain by which the parties had finally settled all their controversies growing out of the concession. But that would be to declare that the honorable commission had powers not granted by the instrument which created it and strictly limited its functions.

The parties themselves were in the best position to decide what kind of adjustment would be satisfactory, and up to the final moment of the execution of the convention had full power and right to withdraw, modify or amend their proposals. It was for the one side to say how much of its right of forfeiture it would yield, in order to satisfy the amicable request of a friendly government, and to obtain an immediate delivery of the road and its equipment—how generous or how exacting it would be; how much or how little it would pay. It was for the other side to say what it would be willing to accept in order to avoid a decision by arbitrators, under the 37th Article of the Conces-

sion, of the question whether or not forfeiture had been incurred, for it must be remembered that the company had not completed the road, as it had promised to do, and that the Colombian Congress, at each of its biennial sessions held after the company's default, had directed the Executive to initiate proceedings to dispose of the question of forfeiture, and it must also be remembered that the delay in bringing on the forfeiture proceedings had occurred through Executive clemency and by reason of the friendly intervention of the United States. But while the inquiry should be strictly limited to the matter submitted by the convention, yet the company insists on an exami-
(1426) nation of the supposed equities existing between the parties, and so the circumstances existing at the time of the execution of the convention will have to be looked at in order to meet that position.

The positions of the parties up to the time of the signing of the convention were as follows:

The company had not built the road—that was clear; under the concession, its failure entailed forfeiture—that was clear; it was at the mercy of the result of an arbitration upon the sole question whether or not its failure to build the road could be so excused as to defeat the forfeiture clause of the concession—that also was clear; the company had received from the Government a clean *bonus* of a very large amount—that, too, was clear.

On the other hand, the Congress, in 1894, had insisted on forfeiture, but the Executive, through clemency, had delayed to exact it, and had only issued the decree of caducation on October 16, 1895, and at the request of the American Minister, even this decree had been suspended (January 23d, 1896) until the Congress should have again assembled, and Congress, after having met, had by Law 41 of October 20, 1896, in substance instructed the Executive to close the Cauca railway question either by contract or by arbitration under Article 37 of the original concession—*an arbitration which would either take the entire railway from the company without compensation or would leave the company in possession of an unprofitable undertaking, the ultimate forfeiture of which would be but a question of time.*

In and by the convention the parties, for themselves, settled all questions growing out of this state of affairs, and it was provided that the company should surrender the concession and everything connected with the road, and that the Government should pay therefor a sum equal only to what the company should prove that it had expended on the construction work executed by it and in the purchase of materials imported for use on the railway. Although the merits of the bargain are not open to discusssion, it may be well to remember that the com-
(1427) pany was no sufferer by this agreement.

It had received from the Government a fortune in subsidies under its promise to build the road; it had let the latter run down and had, in that way, been able to show apparent net profits, sums which should have gone to repairs, but which it kept; it had not built the road and could never do so; while the Government, instead of then taking the road for the mere expense of forfeiture proceedings, or waiting to take it later in the same manner, ignored its payments of *bonus*, ignored the broken promise of the company to build the road, and took the latter, in a run-down condition, off of the company's hands at a sum equal to the expenditures upon construction and equipment.

In view of the company's default and of its utter inability ever to keep its agreement, and of the efforts of Congress to close the matter by proper legal procedure—declaration of forfeiture followed by arbitration—the liberality of this settlement can only be attributed to the generosity of the Government and to its desire to manifest its consideration for the United States by magnanimous action upon the latter's friendly requests.

For the honorable commission to busy itself with the consideration of supposed equities arising out of the circumstances involved in the settlement, would be to volunteer to revise and modify the parties' own bargain.

While the parties have agreed that the settlement arrived at was, for their purpose, an "equitable" and "just" settlement, and the "sole indemnity" contemplated, it does not follow that other minds would necessarily accept it as "just" or "equitable"; thus, a just and judicial mind might have held that the strict right of forfeiture should have been asserted and an effort made to recover the great sum paid in subsidies, while a sentimental mind might have favored a still further extension of time, in order that the company might have the very fullest opportunity actually to exhaust every possible means for the rescue of its (1428) enterprise, even to the point of final disaster. By the convention the parties took all such questions out of the domain of doubt, settled them in their own way, and put them beyond controversy or dispute.

Therefore, the matter left to the honorable commission does not involve the ascertainment or settlement of equities or imply either the duty or power of adjudication thereon. The honorable commission is not a court of equity, nor is it clothed with equity powers.

V.

Under the convention the duties and powers of the honorable commission are very simple and very clear. It is required to find out the amount of the indemnity agreed upon by the

parties, not to declare what, in its opinion or wisdom, would be a proper indemnity.

The parties have settled the equities to their own satisfaction, and have not left them to the decision of others. The only reason why a commission was necessary was that the officials of the Government and the representatives of the company were not in a position which would enable them amicably to agree upon the amounts which had been actually expended in construction work and for material imported for use on the railway; had they been in such position, those amounts would have been settled and the Government, instead of paying $200,000 on account of the total of such amounts, would have paid the total itself, and so the whole matter would have been ended.

The parties had, however, agreed that the sole indemnity should be identical with the sum of the expenditures in construction work and for material imported for use on the railway, but the Government was not satisfied to accept the company's statement of the aggregate of such expenditures. This latter was the only question left open, and so it was agreed that a (1429) commission should be appointed to ascertain such aggregate, and to allow it as the just and sole indemnity or consideration to be paid by the Government. The present honorable commission is the product of that agreement, and its duty, which limits its power, is to ascertain the aggregate of the sums expended in construction work and in the purchase of materials imported for use on the Cauca railway, and, having found such aggregate, to declare that total to be the just and sole indemnity agreed upon by the parties. In selecting the separate expenditures which should be included in the total that is to be used as the standard by which the indemnity is to be measured and ascertained, the commission would have to exclude every expenditure, the result of which had not gone into or been done upon the concrete road or the material imported for use thereon. Thus, the company's general expenses could not be charged to cost of construction nor to equipment, for every active company has to maintain its existence, have an office, employ and pay officers, agents, accountants, clerks, etc., no matter what or how many enterprises it may have on hand.

In the case of a railway company operating a road it is evident that it has administration expenses (company management, &c.), train service expenses and expenses of maintenance.

It is certain that none of the foregoing expenses could be deemed construction expenses, and this will be quite evident if the railway be not engaged in any construction work.

Should the company engage in the construction of a new work the moneys actually expended for surveying, laying out and building its road, including moneys expended for local ad-

ministration of the work of construction, would be properly chargeable to construction.

In the accepted estimate of $233,909.14 as cost of construction and equipment, 32¾ % of the estimate of strict construction expense has been included to cover administration—which is a very liberal allowance. This is a very important point and calls for reflection, for with a full knowledge that this percentage of 32¾ % had been included in the $233,909.14 (1430) total cost of construction and equipment, the company accepted the last-named sum as correct, and thereby admitted that in being allowed such sum it would receive complete indemnity for all construction and equipment expenses, inclusive of a liberal allowance for contingencies, general expenses and administration.

But, irrespective of the foregoing, it may be said that whatever particular expenditures should be allowed as expenditures on construction or in equipment, there can be no possible dispute on the general proposition that moneys *not expended* on construction or in equipment should *not* be considered as *having* been expended thereon or therein.

Thus, for example, if it be conceded that the expenditures on the construction work done on a now completed railroad have amounted to a given sum, it is clear that no other expenditures could be justly considered as expenditures on construction in respect of that road. This proposition needs no argument for its support. We are thus brought to the consideration of the effect of the stipulation entered into by the parties herein on the 31st day of August, 1897.

VI.

By stipulations entered upon the record herein on the 31st day of August, 1897, the parties agreed upon the *total* expenditure upon the *surveys*, in the *complete construction of the road* and *in the purchase of its equipment or rolling stock*.

The stipulation is in the following words:

"It is stipulated by the parties to this controversy that, in fixing the amount expended by the company upon the following items of construction work and equipment on and of the Cauca railroad, the commission shall find, in lieu of an appraisement of the items, that said company expended on said items the (1431) following sums—that is to say:

"Surveys	$ 22,805 00
"Completing road from K. 27.100 to K. 29.750.	40,652 58
"Completing road from K. 29.750 to K. 36.740.	133,546 55
"Work beyond San José	15,328 01
	$212,332 14
"Rolling stock	21,577 00
"Making in all	$233,909 14"

"This stipulation is without prejudice to any claim, or defence of either party relative to any matter not specifically mentioned above."

It will be seen, therefore, that the parties, for the purpose of this case, have agreed upon the amount to be found by the commission as to the total of expenditures on the surveys and complete construction and equipment of the road. "Completing road" means completing the construction of the road, and so the corresponding expenditures of construction or completion, inclusive of whatever has been included to cover contingencies or administration, must be the total expenditures for construction or completion.

Certainly no *more* than the *total* expenditures on the matters referred to in the stipulation, could be considered as expenditures thereon, and therefore the honorable commission has nothing further to do in fixing the amount of the indemnity, for the parties (in the convention) agreed that the indemnity to be paid should be only equal to the expenditures in construction work and equipment, and by the stipulation they have clearly agreed upon the gross amount of such expenditures, inclusive, as seen, of 32¾ % for contingencies.

The honorable commission then should fix the total of the expenditures on construction and on equipment at $233,909.14, and should deduct therefrom the $200,000, already paid by the (1432) Government, plus the value of the construction material, tools, &c., turned over by it to the company, and by the latter consumed in construction, the estimated cost of which is included in said sum of $233,909.14. The value of the materials, tools, &c., should be about $20,000; but, as the proof is indefinite on this point, the commission will have to fix such value in such reasonable manner as to it shall seem just.

A moment's attention may be given to the final clause of the above-mentioned stipulation, which is as follows:

"This stipulation is without prejudice to any claim or defence of either party relative to any matter not specifically mentioned above."

The purpose of this final clause was to leave the company free to argue that under the convention it might claim reimbursement for expenditures not made either in construction or

equipment, but it is submitted that the convention contemplates no such reimbursement.

Had the stipulation not been made, the honorable commission, in some particular instance, might possibly have been in doubt as to whether or not the item involved in such particular instance should be deemed an item of expenditure on construction or on equipment, *but since the stipulation no such doubt can arise*, for the parties themselves have agreed upon the total expenditures upon *complete* construction and equipment.

As to the amount of the indemnity, then, the only question left open by the stipulation is whether or not, under the convention, the company is entitled to any reimbursement for expenditures admittedly not made either in construction or equipment. We say "admittedly not made either in construction or equipment" because it is evident that, having stipulated as to the expenditures involved in *complete* construction and equipment, any other expenditures claimed must and can only be for matters *not* included in either construction or equipment. (1433) The question, then, is reduced to this:

All the expenditures to be considered as having been made in construction or equipment have been stipulated to amount to $233,909.14.

All other sums claimed must, therefore, be held to have been excluded by the stipulation from construction or equipment expenditures.

If office rent, salaries, travelling expenses, payments for extra services, interest paid, price paid for concession or any like items *are proper charges against construction*, then by the stipulation they have been included in the totals agreed upon as the expenditures for

" Surveys	$ 22,805 00
" Completing road from K. 27.00 to K. 29.750	40,652 58
" Completing road from K. 29.750 to K. 36.740	133,546 55
" Work beyond San José	15,328 01
	$212,332 14
" Rolling stock	21,577 00
" Making in all	$233,909 14"

and to allow for them separately would be to allow the same items twice—once in the total of the stipulated expenditures on construction and equipment, and a second time in the separate allowance. (As shown before, a liberal allowance (32¾ %) has been included for administration and so forth.)

If such expenditures—office rent, salaries, etc., etc.—above

enumerated, are *not* proper items to be considered as construction or equipment expenses, and so have not been included in such stipulated expenditures, then the honorable commission cannot include any of them in the indemnity without holding, absolutely, that expenditures that confessedly have nothing to do with either construction or equipment may nevertheless be (1434) included in the aggregate sum which is to be the measure of the indemnity. But we deem the following proposition to be beyond dispute—namely: That the honorable commission has no power to include in the indemnity an allowance for any expenditure which cannot be claimed to have been made in either construction or equipment of the railway. We deem it also beyond dispute that by the stipulation the parties have, for all the purposes of this proceeding, clearly defined what items shall be considered as expenditures in construction and equipment, and that therefore there is no room for the exercise by the honorable commission of any discriminating judgment as to whether or not any given item should or should not be deemed an expenditure appropriate to be charged to construction or equipment. If the foregoing course of reasoning be sound, then it follows that the honorable commission can only allow items not included in the stipulated amount, because under the convention it may allow expenditures that, confessedly, have nothing in any way whatever to do with either construction or equipment.

VII.

Without for a single moment waiving its contention (1) that in the *Convention* the parties provided that the sole indemnity should be absolutely limited to the aggregate of the expenditure in construction work and for material imported for use on the railway; (2) that by the *stipulation* the parties have themselves authoritatively fixed the amount which shall be found by the honorable commission as the total expenditures on and for such work and material; (3) that the honorable commission has no equity powers; and (4) that the parties did not submit any matter of equity to the honorable commission, the (1435) Government deems it not improper to say: That in and by the "Analysis of Interest Payments" *ante*, and the "Liquidation" *ante*, it appears that the company, though failing to keep its promises to the Government, and wholly unable to carry on its undertaking, so managed matters that it escaped the penalties of the concession, and got out of the Cauca railway enterprise with a profit.

By the adoption of a false period from which to compute interest (afterwards discovered by the Government) the company obtained from the Government payments for interest that

never became due, amounting to.....$ 86,533 67
The interest on which amounts to..... 22,774 92

$109,308 59

Which represents a just indebtedness of the company to the Government, from which the company escaped by the execution of the convention.

The amount paid by the Government as interest (subsidy) was.....$140,747 02
The amount really due was..... 54,213 35

The amount of overpayment was.....$ 86,533 67

In order that an understanding may be had upon the question whether or not the company was at the time of the execution of the convention in a position which it was entitled to equitable consideration at the hands of the Government, it will be well to remember the following facts:

(1) The company was in default and subject to forfeiture of the concession and the constructed road.

(2) The Government had paid to it, in gold, as subsidy, $140,747.02; of which $86,533.67 was an overpayment obtained by the adoption of a false period from which to calculate interest (subsidy).

(3) The company's financial results were:

It had received from sales of stock and bonds as follows:

(1436) Stock paid in.....$213,875 00
Bonds (paid in on)..... 124,750 02

Making a total of.....$338,625 02
Deducting agreed expenditures on construction and equipment..... 233,909 14

Leaving a balance on hand.....$104,715 88
The company also received, as balance of guaranty and net revenue..... 166,132 61
And from the Government at Bogotá..... 200,000 00

Making a total in the hands of the company of.$470,848 49
Out of which it could pay back stock and bond receipts..... 338,625 02

And still have a balance of.....$132,223 47
From which to repay the interest paid on bonds (Barney's report)..... 30,626 13
After which it would have a final balance of..$101,597 34
which should be sufficient to cover office expenses (New York)

and proper salaries and travelling expenses of Messrs. Cherry and Schramme—although the latter, at the rate of $79,808.93 for two trips to Bogotá "come rather high."

The true state of the company's fiscal accounts, as shown, affords the best possible answer to any suggestion that the parties to the convention intended that anything more than the strict expenditures on actual construction work and the expenditures proven to have been made for materials imported for use on the railway should be included in the indemnity which had been limited by themselves, and which, as so limited, had been declared to be the "just and sole" indemnity which was to be paid. But as the parties, as already shown, have *now* agreed upon the *items* which shall be accepted (and shall be found (1437) by the honorable commission) as the *totals of expenditures* on *construction* and *equipment*, the "just" and "sole indemnity" has been fixed by stipulation upon a basis which leaves the company an actual profit after payment of all its proper and reasonable expenses and the repayment of moneys received on stock and bond sales with interest.

It thus appears that by keeping within the terms of the convention the company will get off with a profit, whereas, if the settlement were predicated upon actual "equities," instead of upon the terms of the convention, the company would have to account to the Government for a considerable sum.

VIII.

As the convention only charged the honorable commission with the duty of ascertaining the expenditures of the company in construction work and for material imported for use on the railway (equipment), and as the parties have now agreed upon such expenditures and summed them at $233,909.14—which includes a liberal allowance for administration and so forth—the indemnity should be fixed at that sum, less the $200,000 already paid and less the value (about $20,000) of the construction material turned over by the Government to the company and used by the latter in construction. It is essential that a fair credit should be allowed for this material, because its value has been included in the above total of $233,909.14 as though the company had paid for it.

In submitting the foregoing brief the representatives of the Government desire to say that the short delay in the presentation has been occasioned by the voluminous character of (1438) the testimony, the nature and number of the documents, accounts and exhibits to be examined, and by the desire on their part to so sift, collate and arrange the essential facts as to assist the honorable commission to a rational conclusion

which shall be accepted by the parties as just and final and shall stand the examination and meet the approbation of the Republic of Colombia and the United States, out of whose mutual friendship and esteem the present honorable commission sprang.

All of which is most respectfully submitted.

FRANCISCO J. CISNEROS,
Attorney for the Republic of Colombia.

RODERICK ROBERTSON, Counsel.

APPEARANCE.

IN THE UNITED STATES CIRCUIT COURT, FOR THE DISTRICT
(1439) OF WEST VIRGINIA. IN EQUITY.

The Republic of Colombia,
vs.
The Cauca Company and The Colombian Construction and Improvement Company.

Mr. Clerk: Please enter my appearance in the above cause for the Defendants.

JOHN W. BEAUMONT,
Sol. for Defendants,
Detroit Michigan.

EXCEPTIONS TO ANSWER FOR IMPERTINENCE.

Filed 7 day of March, 1898.

L. B. Dellicker, Clerk C. C. U. S., D. W. Va.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(1440) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

CALDERON CARLISLE,
WM. G. JOHNSON,
Counsel for Complainant.

EDWIN MAXWELL,
Of Counsel.

Filed April Rules 1898.

L. B. Dellicker, Clerk C. C. U. S., D. W. Va.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1441) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

To the Honorable Nathan Goff, Circuit Judge:

Your orator, the Republic of Colombia, prays leave to except to the joint and separate answer of the defendants herein for that the same contains matter impertinent to the cause, which should not be inquired of by this court, and should therefore be expunged therefrom, to-wit:

1. In the twelfth paragraph of said answer said defendants aver:

"The said concession was improperly forfeited under the terms thereof. As soon as the act of forfeiture was passed the United States Minister to the Republic of Colombia, Hon. L. F. McKinney, at the instance and request of the then Secretary of State, the late Hon. Walter Q. Gresham, intervened to protect the rights of these defendants as American citizens; such intervention was made through these diplomatic channels throughout the year 1895. Later, when the said complainant, through its officers, insisted on the cancellation of the said contract, the Hon. Richard Olney, then Secretary of State, cabled the (1442) American Minister to give the defendants and their property the full protection of the United States Government from the improper action of the complainant in the premises. And these defendants are advised, and therefore state, that the allegation in the said twelfth paragraph of said bill of complaint, to-wit: 'This complainant, yielding to the solicitations of the said Cherry as the agent and attorney of the defendant, the "Cauca Company," and in deference to the friendly intervention in its behalf of the Minister of the United State at Bogota, but not in pursuance of any negotiations with the United States of America, and without entering into any compact, agreement or stipulation with the said United States or their representative, voluntarily decided not to avail itself of its right under the contract to assume, without any compensation, the ownership of the work that had been done,' is not in accordance

with the facts. These defendants aver and state that the action of the complainant in proceeding to complete the spoliation of these defendants was arrested by the American Minister, acting under instructions from the State Department at Washington, who intervened for the purpose of protecting the property of these defendants as American citizens from the action of the complainant. All of which is shown by the testimony of the said L. F. McKinney, the then Minister at Bogota, which appears in the Exhibit No. 19, filed by the complainant with its bill of complaint, at the 259th and subsequent pages thereof. These defendants further aver and state that the act of the Congress of the complainant, which is entitled the 'Law forty-one of 1896,' (the Spanish text whereof, and the translation whereof, are given with the bill of complaint as Complainant's Exhibit No. 11), was passed by the Congress of the complainant only in consequence of the prompt and peremptory action of the American Minister, acting under instructions from the State Department at Washington.

"Under said law, the Commission which made the award was constituted, which said act, law or decree was designed by the diplomatic authorities of the United States (1443) and the Congress of the complainant to protect the property of these defendants, and to give unto them full and adequate compensation for their great losses sustained by the action of the complainant. By the terms of the first article thereof it was provided: 'The Executive is hereby fully empowered to equitably compromise with the grantee of the railroad from Buenaventura to Manizales, or his lawful representatives, the questions or differences that may arise in consequence of the declaration of lapse of franchise referred to in the Resolution No. 9, of October 16th, 1895, or by reason of the stipulations of the contract of August 27, 1890, approved by Law 16 of the same year.' So that under and by virtue of the solemn act of the complainant, brought about by the intervention of the United States, there was promised to these defendants full compensation for their property losses and equitable treatment in the ascertainment of the same through the means provided, to wit.: the constitution of a tribunal for the purpose of ascertaining the extent of said losses of these defendants in an equitable manner. Under and by virtue of the authority of said law, and through the offices of the American Minister at Bogota, these defendants reached the adjustment by which a portion of the undisputed compensation due and owing unto them should be paid and the ascertainment of further compensation should be inquired into,

adjudicated, and when ascertained should be paid unto them.

"The letter of the Executive of the complainant, Senor M. A. Caro, upon said subject is found in the exhibit of the complainant No. 21, at page 972 *et seq*. The basis of settlement was agreed upon between the said American Minister and the said Executive, whereby it was provided that the resolution of forfeiture should be suspended and the arbitration tribunal should be constituted for the purpose of giving these defendants *full and adequate* compensation for their losses so incurred. The agreement of January 4th, 1897, provided for the arbitration of the claims of these defendants against the complainant, and constitutes the (1444) document filed by the complainant with its bill of complaint, to wit: its Exhibit No. 11. The agreement provided for the submission to arbitration of the differences between the defendants and the complainant, and also provided in the 4th article thereof for a special commission, to be composed of three members, who were to determine the indemnity to be paid to the defendants. By the 10th article of said agreement the complainant paid unto the said Cherry, the attorney in fact and agent of the defendants, the sum of two hundred thousand dollars ($200,000) in gold, which was specifically stated to be on account of such amount of indemnity as the commission might fix, and the said complainant covenanted and agreed that in the event that the said commission should award unto these defendants any greater amount than the sum of $200,000, that the complainant was 'to pay the excess at such time and in such manner and on such terms as may be determined by the commission.'"

And your orator says that all the said matters and things thus averred are irrelevant, immaterial and impertinent to anything involved in this cause; and your orator shows that in and by said answer the said defendants admit the agreement filed with the bill marked Exhibit No. 4, by the 37th article, of which it is provided that—

"In case, for any reason, the Government declare the concession to be forfeited, the Concessionary, or whoever may represent him, shall have the right to submit the matter to the decision of two experts, one to be appointed by the Government and the other by the Concessionary, and such experts shall appoint an umpire for the case of disagreement. The decision of the arbitrators, or of the umpire by them appointed, shall be final and unappealable."

And your orator says that all the said averments are

irrelevant, immaterial and impertinent to be inquired of by this court as to any matters involved in this cause.

(1445) And your orator shows that by the express terms of said quoted part of said agreement admitted by said answer, it is immaterial whether or not the concession was properly declared forfeited, as in any case, whether rightly or wrongly declared forfeited, any controversy concerning the same was to be referred to arbitration.

And your orator further shows that it is irrelevant, immaterial and impertinent whether or not defendants had the intervention, aid or support of the United States as therein pretended, or any of its officers, since neither the United States nor any of its officers were parties to the agreement of January 4, 1897, under which the pretended award was made, which agreement is by the answer of defendants admitted to be the only authority for said award, and it is therefore irrelevant, immaterial and impertinent to inquire into the action of any person or persons, government or authority not made a party to said agreement.

2. In the thirteenth paragraph of said answer said defendants say:

"But they aver on the contrary that the same was an act of the complainant in its governmental capacity done by it at the instance and request of the United States Government through its official representatives, to-wit: the Secretaries of State Gresham and Olney and through the Minister of the United States at Bogota. The wisdom and prudence of the same are not matters to be considered by the complainant, in its bill of complaint, and it is not to be considered that the constitution of said commission was an act of grace by the complainant, but the same was an act of public justice done by the said complainant as a government, at the instance of the Government of the United States. The selection of a representative of the complainant and the selection of a representative by these defendants was a part only of the institution of said commission as the selection of the third member or umpire was provided to be made by agreement between the Secretary of (1446) State of the United States of America and the Minister of Colombia at Washington, so that by reason of the constitution of the said commission as in the manner aforesaid, the same partook of a public and international character and differed from an ordinary reference to arbitration of a trade dispute of merchants."

Your orator shows that the defendants, in their said answer, admit the agreement of January 4, 1897, as set

forth in the Exhibit 12, to the bill, and the English translation thereof, and it is irrelevant, immaterial and impertinent for this court to inquire into any of the matters and things in the said part of said paragraph quoted.

3. In the fifteenth paragraph of said answer, said defendants aver:

"The said Pena was appointed by the complainant as its representative for the reason of his entire familiarity with the railroad and property, having acted as an arbitrator between the complainant and Francisco J. Cisneros, who was the attorney in fact and counsel of the complainant before the said commission. (The fact being that the said Cisneros had a concession somewhat similar to that vested in the defendants for the purpose of the construction of a road in 1885, which concession was surrendered on account of a revolution in the governmental conditions of the complainant.) Said Cisneros had received under the arbitration of the said Pena and a certain Mr. Conwell the amount of $1,780,000 for the portion of the road constructed, and a portion of the concession vested in these defendants consisted of the work so constructed by said Cisneros and for which he had been so compensated to the amount aforesaid; which matters appear in the evidence of the said Cisneros taken before said Board in Exhibit No. 20, filed by the complainant with its bill of complaint, at page 598 *et seq.* For these reasons the said Pena was chosen by the said complainant as its representative on said commission. The said Christian F. Schramme was appointed by this de-
(1447) fendant, the 'Cauca Company,' as its representative, on account of his having been entirely familiar with all the transactions growing out of the construction of the said road, having been connected with these defendants since their origin. The interest of the said Schramme, in the affairs of the defendants was well known at the time he was selected. He was selected because he was familiar with the business affairs of these defendants, and the complainant and its representatives had full knowledge of his said interests and such associations, and assented unto his appointment with full knowledge of such interest."

And they also further aver as to said Lewis M. Haupt:

"He was selected by these distinguished persons on account of his great knowledge of engineering matters and the construction of railroads, and on account of his high character and standing as an engineer and as a gentleman, —he having been professor at one time in West Point Military Academy, and subsequently extensively engaged in

engineering matters. Such was the reputation and character of the said Lewis M. Haupt that while he was serving on said arbitration commission the present Executive of the United States appointed him as a member of the board to investigate into the proposed construction of the Nicaragua Canal, in which important and honorable occupation he is at present engaged."

And your orator says that all the said matters are irrelevant, immaterial and impertinent to be inquired of by this court for any purposes of this cause.

4. In the twenty-third paragraph of their answer said defendants aver:

"That the true intent and meaning of the agreement between the Republic of Colombia and these defendants, executed on the 4th day of January, 1897 (Complainant's Exhibit No. 12), was that the said commission was constituted, as hereinbefore stated, at the instance and demand of (1448) the United States Government, acting through the Secretaries of State, Gresham and Olney, for the purpose of doing justice unto these defendants and the purpose of recompensing them for their losses sustained by the action of the complainant in resuming the concession granted unto the said Cherry and assigned unto these defendants. That under the law passed by the Congress of the complainant, to-wit: (Complainant's Exhibit No. 11), the authority granted unto the Executive or President of the complainant was to 'equitably compromise with the grantee of the railroad from Buenaventura to Manizales,' or his lawful representatives, the questions or differences that might arise in consequence of the resumption of said concession by the Government. Under the basis of November 27, 1896 (p. 52, Defendant's Exhibit No. 2), and that accepted by the Executive of the complainant, for the purpose of reaching the settlement proposed (page 976, Record,) an arbitration should take place for the purpose of effecting the 'equitable compromise' authorized by the act of the Congress of the complainant (Complainant's Exhibit No. 11). That said commission was given the right under the second article of the agreement constituting the same, to award 'a just indemnity for all the works constructed by the Company during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the Company for use on the railway.'

"By the 3rd article of said act of concord it was agreed that the said just indemnity should be the compen-

sation to the company for all its outlay and expense incurred in the construction of said works, and by the 4th article of the said act the commission was constituted to fix such indemnity. Throughout the said articles of ajustment, the word 'indemnity' was used twice in the 5th article and also in the 9th article and in the 10th article. So that it was stipulated that the defendants were to be indemnified and made whole by said commission for all their outlays connected with the construction of said railway. As early as the 3d session of the said commission (on May 24th, 1897, pages 35 to 39) the scope of such submission (1449) was discussed by the said commission and the chairman, Lewis M. Haupt, submitted unto said commission his finding upon the same, which appears on pages 37, 38 and 39 of said record and part of the said finding was as follows:

"'On this basis your chairman believes, and therefore submits, that the spirit and intent of this agreement should not be limited to the strict technical construction of the words "*trabajos y obras*," since their meaning is modified by the verb "*Costear*" (to pay expenses), as well as by that of the term "*indemnizacion;*" but that the Cauca Company should be awarded a sum of money sufficient to compensate them for all legitimate and necessary expenses incurred in the prosecution of the work; such payment to be made, not as liquidated damages for any liability on the part of either of the high contracting parties, but as full satisfaction for moneys actually invested, the benefits of which must hereafter accrue solely to the Republic of Colombia.'

"These defendants are advised, and so state, that the complainant is bound by and concluded by the action of the commission in the premises. Such was the effect of this action that the said Pena and the said Cisneros sought the advice of counsel upon the subject as to whether they should proceed any further, and, after having received the same, continued the arbitration (pages 176 to 180 Record, Exhibit No. 19)."

And your orator says that all said matters thus averred are irrelevant, immaterial and impertinent to be inquired of by this court as to any of the matters involved in this cause.

5. In the thirty-fifth paragraph of said answer, the said defendants aver:

"Thirty-fifth. Further answering, these defendants say that it would not be possible for this Honorable Court to

fully appreciate the arduous duties assumed by them as the
(1450) successors of the said James L. Cherry in the construction of the public works provided by the Concession made unto him by the complainant in 1890 without an explanation other and further than what appears in the allegations of the bill of complaint. Such contract or Concession was granted by the complainant, the Republic of Colombia, through its executive officers, and also through its legislative body, after it had already made a contract of a similar nature with the said Francisco J. Cisneros (the counsel of the complainant in the proceedings and its attorney in fact before the board of arbitration). Under said contract Cisneros and those associated with him commenced the construction of a railroad from Buenaventura Bay on the Pacific Ocean towards the town of Cali, which is located on the eastern slope of the Andes Mountains. The road was intended to be constructed unto this point and then to go northerly along the valley of the Cauca River to Manizales in the Department of Antioquia. Through physical difficulties, through the lack of labor, and through the disturbed political condition of the Republic of Colombia, the said Cisneros and those associated with him were not able to complete the construction of this road. Under the arbitration as already mentioned, Manuel H. Pena, acting with another, awarded unto the said Francisco J. Cisneros, as is hereinbefore stated, the sum of $1,780,000 (page 680 Record, Exhibit No. 20). The said Cisneros had completed about 27 kilometers of railroad in a period of six years and *and* three months. At the time these defendants commenced the work upon said road, this already constructed work had become so dilapitated that it required practically rebuilding. In addition to the construction of the railroad mentioned in the evidence from Buenaventura towards Cali, the grant also vested in these defendants the exclusive right to construct and operate a railway to a port on the Atrato River navigable for vessels of deep draft coming from the Caribbean Sea by way of the Gulf of Darien, and also to construct a railroad from Cali to the Ecuador line, and also a branch to Popayan, which would constitute a large and important system of railways in the fer-
(1451) tile region of the Republic of Colombia. On one of the lines so to be constructed there was a large deposit of coal which could have been put at the port of Panama at a price not exceeding $5 a ton, the market value ruling at that port being in the neighborhood of $15 a ton, and the demand being practically unlimited. The stockholders of these defendants, knowing the valuable features

in this concession, were abundantly able to furnish the money necessary to construct this railroad. At pages 970, 971 and 972 appear the proffers from the stockholders and others to this effect in June, 1896. Among these stockholders were individuals and houses of the highest commercial standing and great financial strength—the house of Ladenburg, Thalman & Co. being international bankers of well known responsibility. The obstacles to its successful construction were those growing out of the climatic conditions, the difficulty of procuring and retaining labor, and the disturbed political condition of the complainant. The valley of the Cauca river lies between the western and the center ranges of the Andes Mountains, which traverse Colombia north and south. This valley is about 600 miles in length and varies in width to about 100 miles. It is one of the most beautiful and fertile territories to be found in the world. To the west of the western range, lying between it and the Pacific Ocean, extends a stretch of zone of an impregnable tropical jungle. In this zone, with the exception of a very few coast towns, there are almost no inhabitants, the nature of the country making living there almost a physical impossibility, the few settlers being along the river's banks and of mixed blood, mostly negroes. Through this jungle eastwardly from Buenaventura, a distance of nearly forty miles, the Cauca Railroad was to be built before it reached the more elevated habitable country. The purpose of this construction being to penetrate from the Pacific Coast through a gorge of the Andes to the Cauca Valley, from whence it was to be extended north and south. The road through this jungle has been almost entirely (1052) completed. The portion of the road from Buenaventura to Cali would have been the outlet of the entensive Valley of the Cauca River, and access would have been given to the Pacific Ocean and the trade and commerce of the country almost indefinitely expanded. Through this tropical jungle clearings were required to be made, grading done and the railroad built. The rainfall in this portion of Colombia aggregates 360 inches in the year. In the United States the average rainfall is about thirty inches. In some seasons of the year it is usual to have to have a rainfall of from four to eight inches within twenty-four hours. From the proximity to the Equator, and with this volume of rainfall, the vegetation is so rank that it renders the country almost fatal to foreigners. A necessary adjunct to railroad construction in this portion of the Republic of Colombia is a field hospital. It was almost impossible to procure native labor, and the Company attempted to import labor from Jamaica by way of Panama, and went to

large expense for the purpose in the year 1891. As soon as the men arrived the greater portion of them deserted at once into the interior. After the large and important bridge had been constructed, as referred to in the testimony, it was washed away; it was rebuilt, and a second freshet carried it away; a third time it was placed on the road, and again it was partially destroyed. The same thing happened in the smaller bridges and culverts.

"The country produces absolutely nothing in the shape of manufactured articles necessary in the building of a railroad. Every supply was necessarily imported, and if a small piece of machinery was needed, the work had to stop until it was imported by sea. It was not possible for any person to work for more than two weeks in the month, and labor had to be supplied to keep the work in progress. When the concession was first made the popular feeling was very strongly in favor of the defendants as American citizens; and the officials of the Republic, as well as the residents in the Cauca Valley, received them (1453) with the greatest cordiality. This is shown by the statement of Mr. Pena, the Colombian Commissioner, page 101 and 102 Record, Exhibit No. 19: 'The Governments of the Republic and of the Department looked upon this enterprise as of the utmost importance for the Cauca people, and when the news arrived that a contract had been made with a wealthy high standing company it was received with rejoicings, and Mr. Cherry became the recipient of continuous ovations.' Mr. Pena recognized in his statement a change from this cordiality to a state of great hostility. There was this strong animosity evidenced by the inhabitants of the Cauca Valley against these defendants and it rendered it almost impossible for them to proceed with their enterprise. A revolution in the politics of the complainant took place while the work was in progress, so that its political condition was unsettled. The animosity against the defendants was shown by the hostile legislation revoking the concession and putting in jeopardy all their investments. It was at this period when the United States intervened, and from this intervention the commission was constituted."

And your orator says that all the said matters there averred are irrelevant, immaterial and impertinent to be inquired of by this court as to any of the matters involved in this cause.

And in a further portion of said paragraph of said answer said defendants aver:

"These defendants have answered fully all the allegations in the bill of complaint, and state that they have done so, only for the purpose of vindicating said commission and themselves from the charges made in the bill of complaint, and are advised and respectfully submit that this Honorable Court is without jurisdiction in the premises to consider and set aside said award, inasmuch as the same was and is in the nature of an international award, of a commission constituted by the said complainant, the Republic of Colombia in its sovereign capacity through an act (1454) of its Congress, passed for the purpose of adjusting the claims made by the United States through its Secretary of State and its diplomatic channels. Said award should not be considered or disturbed by this court, when the said complainant does not fully submit itself unto the jurisdiction of this Honorable Court, and does not tender itself ready and willing to perform any decree which may be passed in this cause by this Honorable Court, but invokes its jurisdiction solely for the purpose of impugning the motives and discrediting the actions of the honorable members of the said board selected as aforesaid, so as to leave these defendants wholly without remedy to obtain compensation for their property taken from them unjustly by the complainant."

And your orator says that by the said agreement of January 4, 1897, and the English translation thereof made, Exhibit 12, to the bill and admitted by the said answer, it appears on the face thereof that the said agreement is exclusively between the complainant and the defendant, the Cauca Company, and no other person, governments or authority whatsoever, and it further appears both by the admissions and positive averments of said answer that neither the United States nor any of its diplomatic officers were parties to said agreement, but, that on the contrary, complainant declined to treat said matter diplomatically, and the only act of the United States, or any of its officers, in connection therewith was to acquiesce in said refusal and to decline to act in the matter, or be a party thereto, or even to be present at the execution thereof, and that the said last-quoted averments of said thirty-fifth paragraph of said answer are not only impertinent but are repugnant to the distinct admissions and averments of the said answer.

And your orator therefore prays that all the said several matters and averments in the said answer above excepted to be decreed to be impertinent and ordered by this (1455) court to be expunged from said answer, to the end that the record in this cause be not needlessly encumbered by prolix and useless averments in the pleadings and a vast

amount of testimony as to irrelevant, immaterial matters, impertinent to the consideration and determination of this cause.

(Signed.) CALDERON CARLISLE,
WM. G. JOHNSON,
Counsel for Complainant.

EDWIN MAXWELL,
Of Counsel.

Service of a copy of the above exceptions acknowledged this second day of April, 1898.

(Signed.) COWEN, CROSS & BOND,
Attys. for Defts.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1455½) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

Motion by the Cauca Company and the Colombian Construction and Improvement Company for leave to file cross-bill in said cause against the said Republic of Colombia.

To the Rebublic of Colombia,
Messrs. Carlisle and Johnson, its solicitors.

Please take notice, that at 10 o'clock on the 8th day of June, 1898, or as soon thereafter as counsel can be heard, the undersigned will move the court for an order in accordance with the prayer of said petition.

COWEN, CROSS & BOND,
Solicitors for the Cauca Company and
The Colombian Construction &
Improvement Company.

Service of the foregoing notice and copy of the petition therein mentioned admitted this first day of June, 1898, and further notice waived.

CARLISLE & JOHNSON,
Solicitors for the Republic of Colombia.

STIPULATION OF COUNSEL.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1456) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

It is hereby stipulated by and between the counsel for the complainant and the counsel for the defendants herein, with the approval of the court, that the exceptions heretofore filed by the complainant to the joint and separate answer of the defendants herein shall be heard in the first instance before the court instead of being referred to a Master.

It is further stipulated and agreed that said hearing shall take place on the 8th day of June, 1898, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, at the city of Baltimore, in Chambers, and that the hearing on the exceptions shall precede the hearing on the motion of the defendants for leave to file a cross-bill, noticed for the same day, which hearing shall, subject to the convenience of the court, take place immediately after the completion of the presentation of the exceptions to the answer.

Washington, D. C., June 1st, 1898.

(Signed.) COWEN, CROSS & BOND,
Counsel for the Defendants, The Cauca Company, and the Colombian Construction and Improvement Company.

CARLISLE & JOHNSON,
Counsel for the Complainant, The Republic of Colombia.

The aforegoing stipulation is approved.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge.

June 4, 1898.

MOTION FOR LEAVE TO FILE THE ANNEXED CROSS BILL.

(1457) Filed 8 day of June, 1898.

L. B. Dellicker, C. C. C. U. S. D. W. Va.

IN THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF WEST VIRGINIA. IN EQUITY.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

To the Honorable Nathan Goff, Judge of the Circuit Court of the United States, for the District of West Virginia.

The Cauca Company and the Colombian Construction and Improvement Company by Cowen, Cross and Bond, their solicitors, respectfully move this Honorable Court for leave to file the cross bill herewith exhibited in the cause now depending in this Honorable Court, wherein the said (1458) Republic of Colombia is complainant, and they, the said Cauca Company and The Colombian Construction and Improvement Company are respondents, upon the grounds and for the reasons stated in the said cross bill.

They further move that the said Republic of Colombia be required by proper order of this court to designate an attorney-in-fact or representative subject to process upon whom the subpœna prayed in said cross bill and any further orders of this Honorable Court in the premises may be served, with authority to accept or receive service of process, order or decree herein as may be necessary or proper for the exercise of the full jurisdiction of this court in the premises.

And also that such order shall provide that in default of the appointment of such attorney-in-fact or representative within .....days from the date of such order, that the bill of complaint filed on the 17th day of December, 1897, by the said Republic of Colombia *vs.* the Cauca Company and The Colombian Construction and Improvement Company shall be dismissed.

COWEN, CROSS & BOND,

of Counsel for the Cauca Company and the Colombian Construction and Improvement Company, Complainants.

Service of copy of the aforegoing Motion and Cross Bill admitted this first day of June, 1898.

(Signed.) CARLISLE & JOHNSON,
of Counsel for the Republic of Colombia.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(1459) DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and The Colombian Construction and Improvement Company. } In Equity.

This cause coming on to be heard upon the exceptions of the complainant to the joint and several answer of defendants and being argued by counsel, after the filing of the cross-bill by defendants with leave of the court on this 8th day of June, 1898, and the answer of this complainant thereto, and the counsel for defendants in open court having stated that they did not question or deny the jurisdiction of this court, and admitting that the said agreement of January 4, 1897, between the complainant and the Cauca Company is not an international agreement and that the arbitrators thereunder and their alleged award possessed no international or diplomatic character, it is ordered that the last portion of the 5th exception covering the last portion of the 35th paragraph of the answer is sustained and the said matter ordered to be expunged. And decision upon all the other matters covered by the exceptions is reserved by the court to another day.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge,

June 8, 1898.

ORDER OF COURT.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(1460) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and The Colombian Construction & Improvement Company, Defendants. } In Equity.

The motion of the defendants in the foregoing cause, the Cauca Company and The Colombian Construction &

Improvement Company, for leave to file a cross-bill in said cause against the Republic of Colombia, having come on to be heard and counsel for the Republic of Colombia not objecting, it is, this 8th day of June, 1898, ordered by the court that the said Cauca Company and The Colombian Construction and Improvement Company have the leave prayed to file the cross-bill tendered with said motion.

Counsel for the Republic of Colombia in open court having stated that they were authorized and ready to appear and file an answer to the cross-bill tendered, further order on the said motion is denied.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge.

June 8th, 1898.

(1461) IN THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF WEST VIRGINIA. IN EQUITY.

The Cauca Company and the Colombian Construction and Improvement Company, Complainants,
vs.
The Republic of Colombia, Defendant.

CROSS BILL AND MOTION FOR LEAVE OF COURT TO FILE THE SAME.

COWEN, CROSS & BOND,
Solicitors for Complainants.

JOHN W. BEAUMONT,
EDWARD H. MURPHY,
E. J. D. CROSS,
HUGH L. BOND, JR.,
Of Counsel.

(1462) IN THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF WEST VIRGINIA. IN EQUITY.

The Cauca Company and the Colombian Construction and Improvement Company, Complainants,
vs.
The Republic of Colombia, Defendant.

Cross Bill.

The Cauca Company and the Colombian Construction and Improvement Company, corporations duly formed un-

der the laws of the State of West Virginia, as hereinafter mentioned, with leave of this Honorable Court, duly had and obtained, file this, their cross bill, against the Republic of Colombia, a foreign state, now a litigant in this Honorable Court, and thereupon your orators complaining show:—

First. That there is pending in this Honorable Court the bill of complaint of the said Republic of Colombia, as (1463) complainant, against the said Cauca Company and the said Colombian Construction and Improvement Company, as defendants, which was filed on or about the 17th day of December, 1897. That the said bill of complaint asks this Honorable Court to set aside a certain award made on the 22ud day of October, 1897, by the commission of arbitration, appointed by the Republic of Colombia and this defendant, the Cauca Company, which said award grew out of the transactions and dealings of these complainants with the said Republic of Colombia in the construction by them of a certain railway located in the Republic of Colombia, running from Buenaventura towards the city of Manizales. By which said award it was adjudged by the said commission of arbitration that the said Republic of Colombia should pay unto your orator, the Cauca Company, the sum of $452,048.93 on or before the 26th day of January, 1898, in gold coin of the United States of America, as will more fully appear by a copy of said award filed with said bill of complaint of the said Republic of Colombia and marked "Exhibit No. 16."

Your orators further state that this Honorable Court has issued a temporary restraining order prohibiting these complainants from enforcing the said award until the further order of this court.

Your complainants further state that on or about the 7th day of March, 1898, they duly filed their full answer unto the said bill of complaint, to which said answer the said complainant did, on or about the 2nd day of April, 1898, file certain exceptions; and the said litigation between the said Republic of Colombia and these complainants is now pending and undetermined in this Honorable Court.

Second. Your orators further state that on or about the 27th day of August, 1890, the said Republic of Colombia was the owner of a certain railroad, which commenced (1464) at Buenaventura and ran eastwardly towards the said city of Manizales, which was uncompleted, and that the entire property required repairs and reconstruction to permit the same to be efficiently operated. That on or

about the 27th day of August, 1890, a certain James L. Cherry entered into a certain contract with the said Republic of Colombia, through its authorized public officials, a copy of which contract is filed with the bill of complaint of the said Republic of Colombia in said cause as "Exhibit No. 4," which stated the terms and conditions under which the said Cherry agreed to repair the then existing railroad and construct a railroad as mentioned in said contract, which was known as the Cauca Railway. By said concession the said Cherry and his assigns became the owners of said railway then and thereafter constructed, as will more fully appear from said concession, "Exhibit No. 4." That for the purpose of carrying out the true intent and purpose of said contract, the complainant the Cauca Company, was incorporated under the laws of the State of West Virginia on or about the 29th day of November, 1890; and your orator, the said Colombian Construction and Improvement Company, was duly incorporated by said State of West Virginia on or about the 29th day of November, 1890, as will more fully appear by duly certified copies of said articles of incorporation filed by the said Republic of Colombia with its bill of complaint, the same being "Exhibits Nos. 5 and 6," respectively. That the Cauca Company and the said Colombian Construction and Improvement Company received an assignment of the said contract or concession from the said James L. Cherry on or about the 29th day of November, 1890, copies of which said contracts are filed with the said original bill of complaint of the said Republic of Colombia as "Exhibits Nos. 7 and 8," respectively.

That by the said agreements between the said James (1465) L. Cherry and the said complainants, the said Cauca Company received an assignment of all the rights, title an interest of the said James L. Cherry in the said contract or concession entered into between him and the Republic of Colombia, known as Contract 20 of the 27th day of August, 1890, together with all the rights and privileges of the said concession granted unto the said Cherry, and that the said Cauca Company agreed to perform the said contract; and the said James L. Cherry also assigned unto the Colombian Construction and Improvement Company all his right, title and interest in the contract entered into between him and the Cauca Company, as will more fully appear by reference unto said "Exhibits Nos. 7 and 8."

Third. That after the said assignments were made of said concession unto your orators, they commenced in good

faith within a period of four months from the said 27th day of August, 1890, to repair the existing railroad, and to make the preliminary and other surveys for the new road so to be constructed, and they provided a large amount of supplies for such purpose, such as rails, materials and rolling stock and equipment, and had completed the said railway unto San Jose, a distance of 36.740 kilometers from Buenaventura, and had under construction and partly completed an additional distance of 7 kilometers, the construction of the said railroad (as fully detailed in their said answer filed in said original suit) until the said Republic of Colombia interrupted the same by the passage of a decree on or about the 16th day of November, 1894, wherein the said Government declared lapsed the said contract of the said 27th day of August, 1890, and attempted thereby to forfeit the said contract and to deprive your orators of their property rights in the same, and in the railroad so constructed and being constructed.

As soon as the said act of forfeiture was passed and (1466) attempted to be put in force, the Government of the United States, through its Minister to the Republic of Colombia, the Hon Luther F. McKinney, intervened to protect the rights of your orators as American citizens. The action of the said United States Minister McKinney was taken at the instance and request of the Secretary of State, the late Hon. Walter Q. Gresham, and also the Secretary of State, Hon. Richard Olney, who instructed the said American Minister to intervene and protect your orators and their property from its attempted forfeiture by the said Republic of Colombia. That in consequence of the action of the said United States Government, through its Minister, the said Republic of Colombia, on or about the 19th day of October, 1896, passed a law by which it was provided that the Executive of the said Republic of Colombia was fully empowered to equitably adjust and compromise with your orators all questions or differences that had arisen in consequence of the attempt of the said Republic of Colombia to forfeit the said concession of August 27th, 1890. That a condition of such settlement was required to be the renunciation by your orators of their rights to the franchise granted to construct the said railroad, and also the delivery of so much of said railroad as had already been constructed, and all its rolling stock, etc., unto the said Republic of Colombia; and it was further provided that a tribunal should be constituted to ascertain as a commission of arbitration the amount which was to be paid by the said Republic of Colombia unto your orators for their interest in the said railroad and its rolling stock

and appurtenances, which said law of the Republic of Colombia is filed by it with its original bill of complaint as "Exhibit No. 11." That in pursuance of the act aforesaid the said Republic of Colombia did, on or about the 4th day of January, 1897, execute an agreement for the submission to arbitration of the price payable to your orator, the said Cauca Company, by the said Republic of Colombia, which said agreement for the constitution of a commission of arbitration (1467) for said purpose is filed with the bill of complaint of the said Republic of Colombia as "Exhibit No. 12," to which reference is made. It was stipulated thereunder between the said Republic of Colombia, acting through its Executive, and your complainant, the said Cauca Company, that under the fourth article thereof a special commission was to be constituted to consist of three members, one of whom was to be named by the Secretary of the Treasury of Colombia, another by said Cherry as attorney in fact of your orator, the said Cauca Company, and the third was to be agreed upon by the Secretary of State of the United States of America and the Minister of Colombia at Washington.

By the second article of said convention it was agreed as follows:

"The Company surrenders absolutely the concession to which Article I of the contract, approved by Law 16 of the year 1890, relates, and, within fifteen days next following the day on which this agreement shall be approved, shall deliver to the Government of Colombia the Cauca Railway with all its fixed plant, rolling stock on hand, words (works), buildings, tools, utensils of all kinds, appurtenances, etc., etc. In consideration, therefor, the Government of Colombia is to pay to the Company a just indemnity for all the works constructed by the Company during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the Company for use on the Railway, and which are now in existence."

By the third article of said agreement of January 4th, 1897, it was provided that "the Government of Colombia and the Company (the Cauca Company) accept in advance as the just and only indemnity a sum which shall be the equivalent of what the Company shall prove it has expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., etc., imported for use on such railway."

(1468) By the tenth article of said agreement the said Republic of Colombia paid unto the said Cherry, the attorney

in fact of your orator, the sum of $200,000 in gold, which was specifically stated to be "on account" of such amount of indemnity as the said arbitration commission, so to be constituted, might fix, and the said complainant covenanted and agreed that in the event that the said commission should award unto these defendants any greater amount than the sum of $200,000 that the complainant was "to pay the excess at such time, in such manner and on such terms as may be determined by the commission," which said payment of $200,000 under the said tenth article of the said agreement of arbitration was recited to be a sum much less than the Company considered due or as the just price of the works executed by it, but said payment was made "for the purpose of obtaining the immediate delivery of the railway, in conformity with the last part of Article I of Law 41 of 1896 (Exhibit 11)," and also as a payment on account of the amount of indemnity to be fixed by the said commission.

The sixth article of said agreement of arbitration provided as follows:—

"Should any of the members of the commission decline or resign from the position, or for any reason cease to act, the proceedings of the commission shall not thereby be invalidated, but the commission shall be restored by a new appointment, which is to be made by the party who appointed the member who fails to act, within thirty days, counting from the day on which such failure to act shall occur. If such party shall not comply with such obligation, the Secretary of State, of the United States of America, and the Minister of Colombia at Washington shall proceed by agreement to appoint the person to fill such vacancy."

(1469) Fourth. Under the terms of said agreement of arbitration the said Republic of Colombia did, on or about the 11th day of January, 1897, appoint as its said representative Senor Manuel H. Pena, and as its Attorney in Fact it appointed Francisco J. Cisneros to represent the said Republic of Colombia before the said Commission; and your orator, the said Cauca Company, appointed Christian F. Schramme as its representative; and the third member of said Commission, Lewis M. Haupt, was appointed by the joint action of the Hon. John Sherman, the Secretary of State of the United States, and Senor Julio Rengifo, Charge d'Affaires of the Republic of Colombia at Washington. The said appointments appear by the Exhibits Nos. 13, 14 and 15, filed by the complainant with its original bill of complaint. The said Schramme was ap-

pointed on January 5th, 1897, and the Lewis M. Haupt was appointed on the 18th day of March, 1897.

That, relying upon the good faith of said Republic of Colombia, and in pursuance of said agreement of January 4th, 1897, the railway and property was surrendered and delivered up, and said Republic of Columbia took possession of the same on or about the 27th day of January, 1897.

The said arbitration Commission commenced to perform its duties on or about the third day of April, 1897, and it was allowed by the eighth article of said agreement of arbitration a period of 150 days, commencing with its installation, within which time it should transact the business imposed upon it, which said time would have expired on the 30th day of August, 1897. The said arbitration Commission had the authority to extend its period of time for 60 days more in case a justifiable ground for delay should arise. It exercised this authority, and extended said time for 60 days at its 27th meeting, on August 30th, 1897.

Your orators aver that the said Commission commenced to hold its sessions on or about the 3d day of April, 1897, and continued in session at various periods until the 22nd of (1470) October, 1897; that it held thirty-six meetings, and heard a very large mass of testimony, which was submitted by your orators and by the said Republic of Colombia; and it also heard full and elaborate arguments by counsel for the respective parties, and proofs were filed before it; all of which appears from the proceedings of the said arbitration Commission, filed by the complainant with its bill of complaint, and marked "Exhibits Nos. 19, 20 and 21."

The briefs of counsel for the respective parties were filed by these complainants with their answer unto the said original bill of complaint of the said Republic of Colombia, and were marked Defendants' Exhibits, Briefs Nos. 1 and 2, which said briefs were part of the record in said original case.

By the fifth article of said agreement of submission to arbitration the said Board of Arbitrators were clothed with judicial powers. They had the right to examine witnesses, to appoint experts, to consider proofs which should be presented before them, to fix the indemnity to be awarded unto your orators, and also had the specific power given them to "determine the procedure to be followed in the exercise of the powers conferred upon it, both as to its own acts as well as to the proceedings of the parties themselves." The said Commission of arbitration, at its second meeting,

determined by unanimous vote that all its decisions should be by a majority vote (see p. 11, Volume I., Record of Commission). The form of procedure was also adopted by the said Commission (see p. 33, Record, Vol. I).

Fifth. Your orators aver and charge that when the said Commission had reached its thirty-fifth session, on the 22nd day of October, 1897, it had consumed under the terms of its constitution a period of 203 days, and that there was remaining of the time limited unto the said Commission for its existence only the period of seven (1471) days; that at the date of the 35th session, on the said 22nd day of October, 1897, it had substantially completed its work, had formulated its finding, and had agreed upon the result; and that the amounts of the various items claimed by your orator, the Cauca Company, to be due unto it under the terms of said submission to arbitration had all been determined, adjusted and agreed upon by a majority vote of said commission. That at date of the 34th session, held on the 19th day of October, 1897, all the members of the commission were present, to-wit: Lewis M. Haupt, who was chairman; Manuel H. Pena and Christian F. Schramme. That at the said 34th session the said commission had passed upon every matter and thing, proper and pertinent to their award, and all that remained was to formulate the same and to draft the finding and authenticate the same; and that on the said 22nd day of October, 1897, when under the terms of its adjournment the work of said arbitration commission was to be formally completed, the said Manuel H. Pena addressed a letter unto the said commission, enclosing a translation of a letter which he stated he had sent unto the Minister of Hacienda, at Bogota, containing the alleged resignation of the said Pena as a member of the arbitration commission, which said letter and the enclosure are found on pp. 907–8, 3rd volume, Record of Commission; and the said Francisco J. Cisneros, the Attorney in Fact of the said Republic of Colombia, also addressed a letter withdrawing from the said arbitration proceedings, and stated that by such withdrawal of the representative of the Republic of Colombia the commission had ceased to have any existence. The said letter from the said Pena, with the translation of the letter transmitted by him unto the Minister of the Republic of Colombia, and the letter of the said Francisco J. Cisneros, are as follows:—

(1472) October 22nd, 1897.

To the Secretary of the Colombia-Cauca Co. Arbitration Commission,
Clarendon Hotel, City:

Dear Sir—,I beg to enclose you translation of a letter I have this day addressed to H. E. the Minister of Hacienda at Bogota, containing my resignation as a member of this Arbitration Commission, which resignation, of course, takes effect from this date.

I shall esteem it a favor if you will kindly place the same before my Honorable colleagues at your next meeting.

Yours truly,
MANUEL H. PENA.

(Translation:)

October 22nd, 1897.

To His Excellency The Minister of Hacienda,
Bogota, Republic of Colombia:

In view of the fact that Lewis M. Haupt and Christian F. Schramme, both appointed as members of the Commission created pursuant to the Convention of January 4, 1897, to decide the controversy between the Cauca Company and the Republic of Colombia relative to the Cauca Co. Railway, have declared their intention to allow the Cauca Company very large amounts of money for alleged expenditures of the Company, having no relation to either the construction expenses of the Company or the purchase of material on the construction of said Cauca Railway, or for use thereon, and whereas the said Commission has not, and never had, jurisdiction to pass upon or allow such expenditures; and, whereas, in my judgment, said Commission have departed from the terms of said Convention and propose to act in the matter of said controversy in a manner wholly beyond their official power as such Commissioners, and to make an award upon matters which the parties to said controversy never intended to submit to their decision; and, whereas, under the said circumstances, I am convinced that it is my solemn duty to refuse to act further with such Commissioners, and to decline to remain a member of such Commission until the alleged intentions of said Commissioners shall have been (1473) carried out by the making on their part of a pretended award upon matters not submitted to said Commission.

I therefore beg to say that I hereby resign as a member of said Commission, such resignation to take effect at the moment of my sinature hereto.

Dated at New York City, this day, 22nd of October, 1897.

(The Secretary then handed the Chairman a letter addressed jointly to himself and Mr. Schramme by Mr. Cisneros, of which the following is a copy:)

New York, October 22nd, 1897.

MESSRS. LEWIS M. HAUPT & CHRISTIAN F. SCHRAMME:

Gentlemen,—Being informed by Mr. Manuel H. Pena that he has resigned his office of Commissioner in the matter of the Arbitration of the controversy between the Cauca Company and the Republic of Colombia, I desire, on behalf of the said Republic of Colombia, to say that such resignation on the part of Mr. Pena has destroyed the autonomy of the Commission of which you and he were members, and that under such circumstances no further act on your part can have any force or effect as an official act on behalf of such Commission or as an official act of a Commissioner in said matter.

Yours very faithfully,

F. J. CISNEROS

The said Commission, not recognizing the withdrawal of the said Pena and the said Cisneros as legal and proper, proceeded, on the said 22nd day of October, 1897, to complete with due formalities its award, and filed the same with the Hon. John Sherman, the Secretary of State of the United States, wherein, as hereinbefore stated, the sum of $452,048.93, the items of which had been ascertained and awarded at prior meetings by a majority vote (the said Pena voting thereon), was awarded unto your orator, the said Cauca Company, as the amount due to it by the said (1474) Republic of Colombia under the said submission to arbitration and convention (in addition to the sum of $200,000 paid on account as hereinbefore stated), and as the sum to which it was entitled under said convention as indemnity to it for the railway, rolling stock and property which had been transferred unto the Republic of Colombia under the said agreement of January 4th, 1897.

It was provided by the ninth Article of said agreement of submission to arbitration that the decision of such commission should be final and conclusive, and there should be no appeal from the same, and the amount of the indemnity

fixed by the said commission should be payable unto the company at such date as said commission should fix; and said commission did ascertain the amount as hereinabove stated, and did fix the date on January 26th, 1898, as the time when the said Republic of Colombia should pay such duly ascertained amount unto your orator, the said Cauca Company.

Sixth. Your orators further aver that the resignation of the said Pena was intended to frustrate the purpose for which said commission of arbitration was constituted, and that the same was not made in good faith and is wholly without any virtue or effect for said purpose, neither at the time of the presentation of such resignation nor at any time since was any offer made by the said Republic of Colombia under the terms of the said submission to appoint another representative, as provided under the sixth Article thereof; it being a physical impossibility for the letter of resignation of said Pena to have been received by the Minister of the Interior at Bogota within the seven days remaining of the time allowed for said Commission of Arbitration to act. Your orators, in their answer unto the said original bill of (1475) complaint of the said Republic of Colombia, in the fifteenth clause thereof, have averred as follows:

"These defendants do not know whether said action of said Pena in so resigning after the said commission had reached a definite result was done by the order or 'with the knowledge of the complainant,' but these defendants are advised and so charge that the said resignation took place with the knowledge and assent of the diplomatic representative of the complainant at Washington, to-wit: the said Julio Rengifo, Charge d'Affaires, and was assented to by him, with the intent if possible to make null and void the action of his government and of the United States Government, and the concurrence of the parties hereto for the purpose of a definite ascertainment of the rights of these defendants. These defendants ask for a full discovery of the knowledge of the said agent of the complainant upon these subjects; and for the production of the telegrams and letters which passed between them upon such proposed resignation."

And your orators further aver that at the date when the said answer of your orators was filed, to-wit: the 7th day of March, 1898, Lewis M. Haupt, the arbitrator, appointed by the joint action of the Republic of Colombia and your orators, through the concurrence of the Hon. John Sherman, as Secretary of State of the United States, and the representative of the Republic of Colombia at Washington, was absent from the country, having been appointed

by the President of the United States as a member of the Commission to investigate the propriety of the construction of the Nicaragua Canal; and that since said answer of your orators was filed on the said 7th day of March, 1898, the said Lewis M. Haupt has returned unto this country, and that the said Lewis M. Haupt has informed your orators that in the early part of the month of July, 1897, while the said arbitration was pending, that the said Cisneros in- (1476) formed (the said Haupt) that he (said Francisco J. Cisneros), who was then acting as the Attorney in Fact, and agent and counsel of the Republic of Colombia, with the assent and knowlege of Pena, had sent unto the Minister of the Interior of the Republic of Colombia, to-wit: Senor Manuel Esguerra, a cablegram of which the following is a translation:

"NEW YORK, July 1st, 1897.

MINISTRO HACIENDA, BOGOTA:—

Commission has decided against opinion of Pena, that Convention fourth January authorizes other expenses abroad besides those of local construction. Schramme sustains that this was agreed so with Government. Renowned Counsel advise Pena to resign and I to retire the Government, should Commission insist on considering all the losses of the Company. Please send precise instructions, aad in case of instructing our withdrawal it will be necessary that Minister at Washington should not accept substitute. This would give rise to the formation of a new Convention.

CISNEROS."

To which said cablegram the said Cisneros received the following answer from the said Minister of the Interior of the said Republic of Colombia:—

(Through the Colombian Consul.)

"BOGOTA, 5th July, 1897.

If Commission condemns Government to pay losses of the Company or other things over and above construction expenses, Government will not accept decision, inasmuch as it would be openly violating the perfectly clear Convention of 4th January. Please inform Cisneros in order that he may notify Commission.

ESGUERRA."

And your orators aver that the sending of the said cablegram on the said first day of July, 1897, by the said

Cisneros, who was the duly appointed Attorney in Fact
(1477) and representative of the Republic of Colombia before said Arbitration Commission, was a scheme on his part in combination with the said Pena and with the responsible executive officer of the complainant to defeat said arbitration in the event that the same should be unfavorable unto the said Republic of Columbia by arranging for the resignation of the said Pena and the retirement of the said Cisneros as the representatives of the said Government, as also arranging that in the event of such withdrawal that the Minister or representative of the said Republic of Columbia at Washington should not appoint a successor unto such resigning member and should not concur with the Secretary of State of the United States in the appointment of a person to fill such vacancy, as provided in the sixth article of the said agreement of arbitration of date January 4th, 1897.

Your orators are advised and so state that said scheme so arranged between the agent or Attorney in Fact and counsel of the Republic of Colombia and the said Arbitrator Pena, and the said Secretary of the Interior of the said Republic of Colombia, was in derogation of the said submission to arbitration so brought about by the Minister of the United States Government, authorized by the Republic of Colombia and assented to by your orators, and that the pretended resignation of the said Pena was not an act of good faith, and that the conduct of the said Pena in so attempting to resign after sitting upon said Commission from the said 5th day of July, 1897, until the 19th day of October, 1897, when it had been already agreed upon between him and the said Republic of Colombia, acting through its Minister, that in the event of an unacceptable award having been made against the said Republic of Colombia, that he should resign and thereby attempt to frustrate the purpose of said submission to arbitration, was part of the inequitable scheme to deprive your arators of their just rights.

And your orators are furthered advised that such action so agreed upon beforehand and attempted to be con-
(1478) summated on the said 22nd day of October, 1897, when the award was ready to be made, did not have the effect of destroying "the autonomy of the Commission" as it was intended to do, as stated by the said Cisneros in his letter of the said 22nd day of October, 1897, unto the said Commission.

And your orators are further advised and state that they are informed that in furtherance of said scheme so to attempt to destroy the said commission of arbitration, the

said Manuel H. Pena did on or about the said 19th day of October, 1897, proceed to the City of Washington and there saw the said Julio Rengifo, Charge d'Affaires of the said Republic of Colombia, and thereupon consulted and agreed with him that in furtherance of said scheme that the proposed resignation of the said Pena should take place, and that the said Julio Rengifo agreed with said purpose and was cognizant thereof and assented thereto; and that the resignation of the said Pena was the result of the said agreement between the aforementioned officials and representatives of the Republic of Colombia that if possible said arbitration should be rendered null and void as the result of said proposed course of action.

Seventh. Your orators further state and aver that under the said agreement of January 4th, 1897, they, relying upon the good faith of the said Republic of Colombia, did on the 27th day of January, 1897, deliver unto its representatives the railway constructed from said Buenaventura towards the city of Manizales, as hereinbefore mentioned, together with the rolling stock and appurtenances, and that the said Republic of Colombia at the time of the delivery unto it entered into the possession of the same and has exercised acts of ownership over the same and has received the revenues and profits thereof. That the surrender of the said railway and its equipment was made by your orator, the said Cauca Company, relying (1479) upon the performance by the Republic of Colombia of the contract entered into between the said Republic of Colombia and the said Cauca Company, whereby the said Government of Colombia was to comply with the said agreement of arbitration and to pay unto your complainant, your orator, the said Cauca Company, such amount of money as should be found due unto it by the said commission of arbitration; and that the said action of the said Republic of Columbia in remaining in possession of the said railway and equipment and property so turned over to it under the circumstances aforesaid, and its refusal to abide by and perform the findings of the said commission of arbitration, is grossly oppressive and unjust unto your orators; and that it is impossible to restore your orators to the condition in which they were when the said railway was so surrendered by the said Cauca Company unto the said Republic of Colombia.

Eighth. Your orators are further advised that by reason of the filing of the bill of complaint of the said Republic of Colombia in the Honorable Court on the said 17th day of December, 1897, the said Republic of Colombia submitted itself unto the jurisdiction of this Honorable

Court, and that this Honorable Court has full jurisdiction in the premises to make such orders or decrees as may be necessary and proper for the doing of complete and entire justice between the said Republic of Colombia and your orators in all matters and things covered by the agreement of date January 4th, 1897, and the enforcement of the award so duly made by the arbitration commission constituted under the said agreement; and that the Honorable Court has full jurisdiction to decree the specific performance of said agreement by the said Republic of Colombia by ordering the payment of the award so made.

Your orators are further advised that as they have performed all the matters and things required to be done by (1480) them under the said agreement of January 4th, 1897, and as they have surrendered unto the said Republic of Colombia the said Cauca Railway, with its fixed plant, rolling stock, buildings, tools, utensils of all kinds and the appurtenances thereof, they are entitled to receive from the said Republic of Colombia in these proceedings the said sum of $452,048.93, in gold coin of the United States of America, with interest thereon at the rate of six per cent. per annum from the said 26th day of January, 1898.

Your orators are further advised that full justice cannot be done in the premises unless the said Republic of Colombia be required to abide by and perform such decree as may be passed by this Honorable Court, and that under the well established rules of international law and the administration of equity the said Republic of Colombia cannot have or maintain further its said bill of oomplaint against your said orators unless it shall formally subject itself unto the jurisdiction of this Honorable Court, and unless it shall designate some person as representing it upon whom this cross bill shall be served for the purpose of enabling this court to do full justice in the premises; and unless it shall designate some duly authorized person within the jurisdiction of this Honorable Court upon whom such orders as may be passed from time to time shall be served in the progress of this cause.

To the end, therefore, that your orators may have that relief which they can only obtain in a court of equity, and that the said Republic of Colombia through its said duly authorized representative may answer the premises and may make full discovery of all its actions and doings in the premises in relation to the said resignation of the said Pena and the design to thereby frustrate said arbitration, your orators pray:

1. That they may have leave of this Honorable Court to file this their cross bill in said proceedings.

(1481) 2. That the said Republic of Colombia be required to designate some attorney in fact or representative within the jurisdiction of this Honorable Court with authority to such attorney in fact or representative to accept service of such process or orders as may be necessary for the exercise of the full jurisdiction of this court.

3. That the said Republic of Colombia, through its duly authorized attorney in fact or representative, shall make full discovery under oath as to all the allegations set forth in the fifth and sixth paragraphs of this cross bill as fully as if the same were restated herein, and the said Republic of Colombia were thereto specifically interrogated; and that full discovery shall be made of the actings and doings of the aforementioned represensentatives and agents of the said Republic of Colombia, to-wit: Francisco J. Cisneros and Manuel H. Pena, of the circumstances of the transmission by the said Cisneros of the cablegram of date of July 1st, 1897, hereinbefore referred to, and also make full discovery of the circumstances of the transmission of the answer of its Minister of the Interior, Senor Manuel Esguerra, of the 5th day of July, 1897; and also make full discovery of any and all cablegrams, letters or communications which may have passed between the ministers or representatives of the said Republic of Colombia and the said Cisneros or Pena in regard to the resignation of the said Pena so proposed to be made for the purpose of attempting to destroy the commission of arbitration constituted as in this cross bill alleged, and further that full discovery may likewise be made of the actings and doings of and between the said Manuel H. Pena and the said Julio Rengifo prior to the said 22nd day of October, 1897, in regard to the contemplated resignation of the said Pena for the purposes aforesaid; and also that the originals or copies of (1482) said cablegrams, letters or communications between the said parties may be produced and filed.

4. That your orators may have a decree for the specific performance by the said Republic of Colombia of the said agreement of date January 4th, 1897, and for the payment of the award so made by the said Arbitration Commission on the said 22nd day of October, 1897, and that the said Republic of Colombia may be decreed to specifically perform the same and to pay the said sum of money, to-wit: the sum of $452,048.93, in gold coin of the United States of America, with interest thereon from the date when the same was due and payable, to-wit: the 26th day of January, 1898, and that the same may be paid unto your orator, the said Cauca Company.

5. That your orators may have such other further and general relief as the nature of their case may require, and as to this Honorable Court shall seem meet and proper.

6. May it please your Honor to grant unto your orators the writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court and directed to the Republic of Colombia, the defendant herein, therein and thereby commanding it on a certain day to be therein named and under a certain penalty, to be and appear before this Honorable Court then and there to answer all and singular the premises, and to stand to, perform and abide by such order, direction or decree as may be made against it in the premises, and as is meet and agreeable to equity and good conscience.

And your oradors as in duty bound will ever pray, &c.

(1483) THE CAUCA COMPANY,
(Signed.) By HENRY A. RICHARDSON,
President.

Attest:
(Signed.) HENRY R. DERWITT, [SEAL.]
Treasurer.

THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY,
By HENRY A. RICHARDSON,
President.

Attest:
(Signed.) E. H. KELLOGG, [SEAL.]
Treasurer.

COWEN, CROSS & BOND,
EDWARD H. MURPHY,
Of Counsel.

(1484) STATE OF NEW YORK,)
City and County of New York,) to-wit:

I hereby certify that on this sixth day of June, in the year 1898, before me, the subscriber, a Notary public of said State of New York, in and for the City and County of New York aforesaid, personally appeared Henry A. Richardson, to me personally known, who made oath in due form of law that he is the President of the complainant, the "Canca Company," that he has read the foregoing cross bill of complaint, and that the matters and things

stated therein are true to the best of his knowledge, information and belief.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.

T. LLOYD McCONCHIE,
Notary Public,
N. Y. Co.

[L. S.]

(1485) STATE OF NEW YORK, City and County of New York, } to-wit:

I hereby certify that on this sixth day of June, in the year 1898, before me, the subscriber, a Notary Public of said State of New York, in and for the City and County of New York aforesaid, personally appeared Henry A. Richardson, to me personally known, who made oath in due form of law that he is the President of the complainant, "The Colombian Construction and Improvement Company"; that he has read the foregoing cross bill of complaint, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and the year above written.

(Signed.) T. LLOYD McCONCHIE,
Notary Public,
N. Y. Co.

[L. S.]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1486) DISTRICT OF WEST VIRGINIA, IN EQUITY,
AT CLARKSBURG.

The Cauca Company and the Colombian Construction and Improvement Com plainants,
vs.
The Republic of Columbia, Cefendant.

ANSWER TO CROSS-BILL WITH EXHIBITS.

Before the Honorable NATHAN GOFF; CALDERON CARLISLE, WILLIAM G. JOHNSON, Solicitors for Complainant: EDWIN MAXWELL, of Counsel.

Filed 8th day of June, 1898.

L. B. Dellicker, Clerk C. C. U. S. D. W. Va.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1487) DISTRICT OF WEST VIRGINIA, IN EQUITY,
AT CLARKSBURG.

The Cauca Company and the Colombian Construction and Improvement Company, Complainants,
vs.
The Republic of Columbia, Defendant

Answer To Cross-Bill.

The answer of the defendant, the Republic of Colombia, to the cross-bill of the Cauca Company and the Colombian Construction and Improvement Company, in chancery exhibit and filed herein by leave of the court.

First. Answering the first paragraph of said cross-bill, this defendant says that it admits to be substantially true the averments of said paragraph as to the proceedings had herein between the parties to this cause, but for accurancy and certainty as to the same it refers to the said proceedings themselves.

Further answering said paragraph, this defendant fendant denies that there was any reward made on the 22d of October, 1897, or at any other time by the Commission of Arbitration appointed by the Republic of Colombia and the Cauca Company, but on the contrary this defendant avers the fact to be that said Commission of Arbitration never made any award, but that certain members thereof, after the autonomy of said commission had been ruptured (1488) by the lawful resignation of one of its members and before it had been restored as provided in the convention creating the same, undertook to make and promulgate as the award of the said commission a certain false, unlawful and erroneous decision, and that the proceedings in this cause were instituted to set aside and have decreed to be null and void the said pretended award.

Second. Answering the second paragraph of said cross-bill, this defendant says that it is true that this defendant on or about August 27, 1890, entered into a certain contract with one James L. Cherry, a copy of which is marked "Exhibit No. 4," is filed with the original bill herein. This defendant does not admit the terms of said contracts or the rights of the parties to be as alleged in said paragraph, but refers to the contract itself therefor.

This defendant denies that by the said contract the said Cherry and his assigns became the owners of the railroad then and thereafter constructed, but, on the contrary,

avers that the said railroad by the terms of said contract was to be the property of this defendant, the said Cherry having only a limited interest therein, as fully appears by said contract.

This defendant denies that the corporations, the Cauca Company and the Colombian Construction and Improvement Company, were incorporated for the purpose of carrying out the true intent and purpose of the said contract with said Cherry, but avers that the real purpose of the organization of said corporations was to speculate in stocks and bonds based upon the credit of the concessions in said contract with said Cherry, and the said corporations were organized as part and parcel of a scheme to defraud this defendant.

This defendant denies that the Cauca Company and the Colombian Construction and Improvement Company received an assignment of the contract of August 27, 1890, between this defendant and the said Cherry, and this defendant avers that the said pretended contracts, copies of (1489) which are filed with the original bill, marked "Exhibits Nos. 7 and 8," are mere shams and part and parcel of a scheme on the part of said Cherry and others to cheat and defraud this defendant, to escape the obligations of his contract of August 27, 1890, and to speculate with stocks and bonds of the said corporations.

Third. Answering the third paragraph of said cross-bill, this defendant denies that within four months from the said 27th day of August, 1890, the complainants in this cross-bill in good faith commenced to repair the existing railroad belonging to this defendant, and that they in good faith did the various other works therein recited for the construction and equipment of the new road to be built under the said contract of August 27, 1890; and, if material, it demands strict proof of all facts therein alleged. And this defendant further shows that the said Cauca Company never did any act or work whatsoever within said four months, or any other time, or furnished any materials therefor, in the premises; and the averment of said cross-bill that it did such work, or furnished materials, is absolutely false.

Further answering, this defendant says that it has no knowledge as to whether or not the Colombian Construction and Improvement Company did any work or furnished any materials for the prosecution of the work under said contract of August 27, 1890; and, if material, it demands strict proof thereof. And this defendant further says that it never had any knowledge or notice, in fact or in law, of

the existence of said last-named corporation, or of the pretended assignment to it of any rights under the contract with Cherry, or that it claimed to have any rights or interests thereunder or therein until, to-wit, the 10th day of June, when it was for the first time apprised of its intentions in the premises through proceedings before the Arbitration Commission hereinafter mentioned.

(1490) Defendant further shows that some work was done upon the said railroad, but in an unskilful, negligent and improper manner, not in accordance with the terms of the contract and not in good faith, but merely such as amounted to a colorable attempt at compliance with the terms of said contract.

Defendant further says that it denies that it interrupted said work, attempted to forfeit said contract or to deprive the orators of their property by the passage of a decree declaring lapsed the said contract of August 27, 1890, or by any other means, but this defendant says that the Congress of this defendant, because of the failure to perform the said contract, declared, in accordance with the terms thereof, the same to be forfeited, and directed that proper proceedings be taken to enforce such forfeiture. That, by the terms of said contract, the question of the right of forfeiture, if disputed, was provided to be referred to arbitration, but the complainants in the cross-bill never agreed or offered, nor did either of them, to submit such question to arbitration as provided in the contract, but on the contrary, the said Cauca Company refused so to do, although, by the express terms of the said contract, it was stipulated that all controversies arising thereunder should be decided by the municipal courts of the Republic of Colombia or by the arbitration therein specifically provided for.

Defendant further says that it is true that the United States Minister acting under instructions from the Secretary of State of the United States induced thereto by the false and fraudulent representatives of the complainants herein, or some of them, that they were denied justice although neither of them had ever sought the settlement of their controversies in any of the modes pointed out in said contracts either by appealing to the courts or by the arbitration therein provided for, sought to intervene therein, but this defendant at all times denied the right of the United States to act diplomatically in the matter, and insisted (1491) upon its right under the contract to the private and internal settlement of the controversy and the said minister finally abandoned the matter and left the settlement thereof to the private agreement between the defend-

ant and the said Cauca Company, and they did actually settle the same by a private agreement between defendant and said Cauca Company dated January 4, 1897, a copy of which and a true and perfect translation thereof into English are filed with the original bill as "Exhibits No. 12."

Further answering said paragraph this defendant says that it is true that the Congress passed the law, a copy and translation of which into English are filed with the original bill marked "Exhibit No. 11," but it denies that said law is of the purport stated in said paragraph, and for the true terms and meaning thereof this defendant refers to the said exhibit. By the terms thereof the executive of this defendant was authorized equitably to compromise with the grantee of the railroad or his lawful representatives the questions or differences that may arise in consequence of the declaration of lapse of the franchise referred to in the resolution No. 9 of October 16, 1895, and it was made a condition of such a settlement that the franchise granted by the contract of August 27, 1890, should be renounced and surrendered, together with the railroad and all its fixed and rolling stock, buildings, tools and other appurtenances. But it is wholly untrue, as set forth in said third paragraph of said cross-bill, the said law "further provided that a tribunal should be constituted to ascertain as a Commission of Arbitration the amount which was to be paid by the said Republic of Colombia unto your orators for their interest in the said railroad and its rolling stock and appurtenances," and this defendant avers that no such provision is contained in said law, and the only matter of arbitration therein referred to is the arbitration of the question of the right of forfeiture contained in Article 37 of the contract of August 27, 1890, as will appear from the Exhibit No. 11, with the original bill and the reso-
(1492) lution of January 23, 1896, accepted by James L. Cherry and referred to in said Exhibit No. 11.

An English translation of said resolution is hereto attached marked "Exhibit No. 1."

In pursuance of the general authority to make an equitable compromise, given by the act set out in "Exhibit No. 11" to the original bill, and not of any special terms of said act, this defendant entered into the agreement of January 4, 1897, being "Exhibit No. 12," with the original bill, but this defendant denies that the said agreement was "for the submission to arbitration of the price payable to your orator, the Cauca Company," as alleged in said paragraph, but, on the contrary, this defendant says that the matter submitted to arbitration was the ascertainment of the amount the Cauca Company should prove it had ex-

pended on the works executed by it in the construction of so much of said railway as had been constructed, and for rolling stock, tools, etc., imported for use on such railway. Further answering said third paragraph of said cross-bill, this defendant admits the passages quoted from said agreement of January 4, 1897, to be correct quotations from the language thereof, but it does not admit to be correct the construction and meaning attempted to be given to said agreement, and for the true meaning thereof it refers to the said agreement itself made "Exhibit No. 12" with the original bill herein.

Fourth. Answering the fourth paragraph of said cross bill, this defendant admits to be substantially true all the averments thereof except the averment that said board of arbitrators was clothed with judicial powers, which this defendant denies, but it admits that said board was clothed with *quasi* judicial powers strictly limited, and for the accurate determination of the nature and extent of the powers of said arbitrators it refers to the said agreement itself by which it appears that the only power conferred upon them was to ascertain and award the amount expended by (1493) the Cauca Company in the work of constructing and equiping the portion of the railroad which had actually been constructed.

Fifth. Answering the fifth paragraph of said cross bill, this defendant denies the averment that at the date of the 35th session of the Commission of Arbitrators on the 22d day of October, 1897, it had formulated its findings and had agreed upon the result, and that the amounts of the various items claimed by your orator, the Cauca Company, to be due to it under the terms of said submission to arbitration had all been determined, adjusted and agreed upon by a majority vote of said commission. This defendant also denies the averment that at the said 34th session the said commission had passed upon every matter and thing proper and pertinent to their award and that all that remained was to formulate the same and to draft the finding and authenticate the same.

This defendant also denies the averment that by the terms of the adjournment of the 34th session, the work of the Commission was to be formally completed on the 22d of October, 1897, at the 35th session.

This defendant also denies the averments that the items of the entire sum of $452,048.93 had been ascertained and awarded at meetings prior to the 22d day of October, 1897, by a majority vote, and that the Commissioner, on the part of this defendant, Manuel H. Pena, voted thereon.

On the contrary, this defendant avers that each and every of the said specified averments in said fifth paragraph of said cross bill are false, and that most important items constituting the aggregate of said pretended award had not been disposed of, nor the consideraton thereof completed on the 22d day of October, 1897, when the said Pena resigned; that he had not voted on the same, and this defendant is informed and believes and, therefore, avers that the same were never voted on at all by the said arbitrators or any of them.

(1494) And further answering, this defendant says, that at the 34th session of the said commission, on the 19th of October, 1897, one of the items of said pretended award, amounting to $48,668.18, being under consideration, the further consideration and discussion thereof was, at the suggestion of Lewis M. Haupt, and with the consent of Christian F. Schramme and Manuel H. Pena, the other arbitrators, suspended and postponed, to be taken up at a later date, to be thereafter designated by said Haupt, which was never thereafter done by him, and the discussion and consideration thereof was never resumed.

And this defendant further shows that at said same 34th session on the 19th of October, 1897, another of said items of said pretended award, amounting to the sum of $32,333.40, was taken up for discussion and consideration; but before the discussion and consideration thereof by the arbitrators was entered upon, at the suggestion of said Pena and by the consent of said Haupt and Schramme, the discussion and consideration thereof were postponed, to be taken up at the same time thereafter that the consideration of the item of $48,666.18 should be taken up, but was never thereafter discussed, considered or voted upon.

And this defendant further says that another item of said award, amounting to $10,000, was never at any time during the said Pena's membership of said commission brought to the attention of said commission; was never claimed by any one, nor was it discussed, considered, voted upon or allowed by said Pena; and that at no time did said Pena vote upon, or have an opportunity to vote upon, or discuss the said several items aggregating over $91,000, or either or any of them. And this defendant further says that many other material and important matters and things, constituting part of the said pretended award were disposed of after the said Pena had resigned without having been voted upon, agreed upon, discussed or considered by said Pena or by said commission while said Pena was a member thereof.

(1495) Further answering said fifth paragraph, this de-

fendant says that it is true that the said Pena wrote and sent to the said Haupt the letter dated October 22, 1897, set out in the said paragraph, enclosing copy of his letter of the same date to the minister of Hacienda of this defendant, who had appointed him, resigning from the commission and that Francisco J. Cisneros wrote and sent to said Haupt and Schramme the letter of the same date set out in said paragraph, But this defendant says that such action on their part was taken without the knowledge of this defendant and was done without the consent or advice of this defendant or of any one acting or authorized to act for it in the premises, and was the independent action of the said Pena and Cisneros acting wholly upon their personal views of what was right in the matter.

And this defendant further says that the agreement of January 4, 1897, explicitly provided for the appointment of a person in the place of said Pena in case of resignation, and this defendant was willing to designate such a person had it had knowledge of the fact of such resignation before the making of the pretended award by the other two members of said Commission, but it was not informed of said action of said Pena until after said pretended award was made and published by mailing copies thereof to the Secretary of State of the United States, and to General Julio Rengifo the diplomatic representative of this defendant in the United States, and the publication of the substance thereof in newspapers in New York City and elsewhere That no application was ever made to this defendant or any one for it by the complainants in this cross-bill or either of them, or any one for them or either of them, or by or on behalf of the other commissioners or either of them to appoint any one in the place of said Pena, but that on the contrary, the Cauca Company, the complainant in this cross-bill, by its counsel, one Marcus Stine, and its representative, Christian F. Schramme, urged the immediate execution of (1496) the said pretended award and on the same day, the 22d of October, 1897, and within a few hours after the receipt of said resignation of said Pena, the said pretended award was composed, written out in triplicate, executed by the said Haupt and Schramme, and acknowledged before a notary, copies mailed as aforesaid to the Secretary of State of the United States and the diplomatic representative of this defendant, and the substance of the award was communicated to the newspapers in time to appear in the issues of October 23d, 1897.

Sixth. Answering the sixth paragraph of said cross-bill, this defendant denies that the resignation of said

Pena was intended to frustrate the purpose for which said Commission of Arbitration was constituted, and denies that the same was not done in good faith, but on the contrary it says that the action of said Pena and said Cisneros was in entire good faith, in what they believed to be the covering of their personal responsibility, the reason given by said Pena being that he was not accorded proper treatment by the said commission, and that he believed the said Haupt and Schramme to be controlled by corrupt and fraudulent motives, and the reason given by said Cisneros being that by the retirement of the Colombian representative the commission was without further power to act until restored; and under these circumstances he had no right further to represent this defendant before said remaining members of said commission.

It is true that this defendant made no offer to appoint a substitute for said Pena, but as before shown this was impossible, because the remaining members undertook, within a few hours of said resignation to make and publish the said pretendee award, and had this defendant been given the opportunity, it would, under advice of counsel, some time theretofore given it, have at once designated a representative in the place and stead of said Pena. And this defendant further says that it was the absolute per-(1497) sonal right of said Pena, whether from good or bad motives, to resign from said office, and such action was contemplated and provided for in said agreement of January 4, 1897, and that the necessary effect of such resignation of said Pena was not of itself to invalidate what had been lawfully done, but to destroy all power for further lawful action by the commission until a successor was appointed.

Further answering, this defendant says that the statements of the complainants in their answer to the original bill reiterated in this paragraph of their cross-bill, that the action of said Pena in resigning was with the "assent of the diplomatic representative of this defendant at Washington, to-wit: the said Julio Rengifo, Charge d'Affaires, and was assented to by him, with the intent, if possible, to make null and void the action of his government and of the United States Government, and the concurrence of the parties hereto for the purpose of a definite ascertainment of the rights of these defendants," is absolutely false and a malicious, unfounded and scandalous charge against the said Rengifo, and this defendant avers the fact to be that the action of said Pena in resigning was in direct opposition to the advice given by said Rengifo, on the only occasion when he was consulted on the subject, on which

occasion said Rengifo distinctly advised and urged said Pena not to resign, and said Rengifo never at any time advised or assented to the resignation of said Pena.

Further answering, this defendant says it is true that said Cisneros sent to the Minister of Hacienda, of this de- of this defendant, a cablegram, in substance, though not in language, as is set out in said sixth paragraph, and that this defendant is informed and believes that in so doing he was acting under the advice of his personal counsel, Roderick Robertson, Esquire, of New York, and of a member of the firm of Evarts, Choate & Beaman, of New York. This defendant further shows that about the same time it it received a cablegram from the said Julio Rengifo, (1498) strongly urging this defendant not to consent to the proposal of Cisneros contained in his cablegram of July 1, 1897.

This defendant further shows that after the said Cisneros had sent said cablegram to this defendant, the said Rengifo requested him to come to Washington, where he consulted the firm of Carlisle & Johnson, the counsel for this defendant in these proceedings, before any reply by cable was received from this defendant, and said counsel then and there advised said Cisneros with reference thereto as follows:

> "Our advice is that the Columbian Government should not withdraw its members of the commission or its representative, but that both should attend the sittings of the commission, and that the objections of the Colombian Government should be timely, properly and carefully made to every step of the commission considered beyond its authority. Should the commission in the end undertake to render a decision against the Colombian Government outside of the provisions of the convention, the decision would be a nullity, and Colombia would be under no obligation to abide by it."

Thereafter, a cablegram from this defendant dated Bogota, July 5th, 1897, in substance though not in language, set out in said sixth paragraph of said cross-bill, was received by said Cisneros, but not as therein stated, through the Colombian consul, but from the said Rengifo, to whom it was sent and who in turn sent it to said Cisneros, by which means he and the said Pena were distinctly advised that it was not the purpose or desire of this defendant that said Pena should resign, nor did it approve such action on his part. And this defendant further says that neither this defendant nor the said Rengifo nor anyone

else authorized to act or acting on behalf of this defendant, gave any other or further direction or advise with reference to the resignation of said Pena than is hereinabove set forth, nor was this defendant nor the said Rengifo nor any one representing it further consulted on the subject.

(1499) This defendant denies the averments of said sixth paragraph of said cross-bill, that the sending of the cablegram of July 1, 1897, was a scheme on the part of the said Cisneros and Pena, and an an executive or other officer of this defendant to defeat the arbitration, and denies that there ever was any such scheme, and it denies that there was any scheme, understanding or agreement not to appoint a successor to said Pena should he resign, and pronounces said allegations to be absolutely false. And this defendant further denies each and every of the averments of said paragraph as to the existence of any scheme on the part of this defendant, or anyone representing it, to frustrate the said Commission, or prevent in any way its legitimate action within its jurisdiction, and each and every of the said allegations are wholly false.

Further answering, this defendant further denies that said Pena, on or about the 19th of October, 1897, came to Washington and consulted and agreed with the said Rengifo in furtherance of said alleged scheme that said Pena's resignation should take place, and that said Rengifo agreed with said purpose and assented thereto; but on the contrary this defendant says that on the night of the 21st of October, 1897, the said Pena, having come to Washington, informed said Rengifo that he (said Pena) had decided, on his own responsibility, to resign the next morning, and he then and there informed the counsel in these proceedings for this defendant that he had definitely so decided; that his personal self-respect would not permit him to continue on the commission. And on said occasion he neither asked nor received any advice from said Rengifo or said counsel, but expressly informed them that he was not seeking such advice, but merely came to announce his final determination, and neither the said Rengifo nor said counsel, nor any one representing this defendant, advised him as to said action, nor assented thereto.

Further answering said sixth paragraph, this de-
(1500) fendant says that the said agreement of January 4, 1897, being a purely private agreement between this defendant and the Cauca Company, and having no international or diplomatic character whatever, the diplomatic representative of this defendant in the United States had no official connection therewith, except in co-operating with

the Secretary of State of the United States, in the appointment of an arbitrator. That the said Pena, as one of the arbitrators, and the said Cisneros, as the agent of this defendant, were the only persons authorized to act in the matter for this defendant, and neither of them was subordinate to the diplomatic representative of this defendant nor had he any authority or control over them or either of them. That this defendant always denied any diplomatic character to the claim provided to be settled by said agreement, and when, in July, 1897, the said Cisneros, who is, and for more than twenty years has been, a citizen of the United States, voluntarily and without request, consulted the diplomatic representative of this defendant, the said Julio Rengifo, it was because of the well known desire of this defendant to prevent the possibility of any diplomatic character attaching to said claim, that the said Rengifo earnestly advised against the propositions contained in the cablegram of the first of July sent by the said Cisneros to the Minister of Hacienda of this defendant, who is the officer charged with the management of the financial affairs of this defendant, having no official connection with the foreign relations of this defendant which are in charge of its Minister of Foreign Relations.

Further answering, this defendant says that it has fully disclosed herein all communications between this defendant and any of its officers relating to the resignation of said Pena; that the said cablegram from said Cisneros to the Minister of Hacienda of July 1, 1897, in substance, set out in said paragraph, and the reply thereto of July 5, 1897, and the letter of said Pena of October 22, 1897, to the Minister of Hacienda, set out in the fifth paragraph of said bill, (1501) are the only communications between this defendant and said Pena or Cisneros on the subject of said resignation and the said cablegram of July 1, 1897, is the only communication from this defendant on the subject.

This defendant further shows that the cablegram of the said Rengifo to this defendant advising against the resignation of said Pena, contained matter of a confidential nature relating to the affairs of this defendant with a foreign State, not the United States of America, and this defendant is advised that such communication is privileged and that it can not therefore be required to disclose the same. But this defendant repeats that the said Rengifo advised this defendant most strongly against the resignation of said Pena, and never at any time advised otherwise or assented to his resignation, nor did this defendant or any one for it.

Seventh. Answering the seventh paragraph of said cross-bill, this defendant says that it is true that the portion of the railroad constructed under the contract of August 27, 1890, was delivered to this defendant, but this defendant denies that it is therefore bound to abide by and perform the said pretended award because it says that the said award is invalid and void through no default or wrong of this defendant but through the fraud and misconduct of the said complainant to this cross-bill and their representative, the said Schramme and the said Haupt, and because the said pretended award is without the submission and beyond the jurisdiction of the commission, and was made when the autonomy of the commission had been destroyed, and without any attempt on the part of the complainant or the said Haupt or Schramme to have it restored, and without any opportunity having been given to this defendant to restore the autonomy of said commission.

Eighth. Answering the eighth paragraph of said cross-bill, this defendant says that it is advised, and believes, (1502) that the averments thereof as to matters of law are not such as this defendant is requirtd to answer.

Answering the averments of fact therein contained, this defendant denies that any award has been duly made which this court can in equity uphold. This defendant denies that the complainants are entitled to receive from this defendant the sum of $452,048.93, or any other sum, by reason of the said pretended award, because the said pretended award is invalid and void. But this defendant says that notwithstanding the invalidity of the said pretended award, this defendant having stipulated and agreed, during the proceedings of the Commission, to a finding against it of the sum of $33,909.14, did, in its original bill herein, tender itself ready and willing to pay the said sum, and it is still so ready and willing to pay the said sum; but it is advised that any claim which the said Colombian Construction and Improvement Company may pretend to have must be satisfied out of said sum.

Further answering said paragraph, this defendant says that it has in all respects, since the institution of this litigation, conformed itself to the rules and practice of this court, doing and being already to do all things which this Honorable Court in the exercise of its jurisdiction has required or may hereafter require of it, as of any private litigant, and it denies that it is requisite or would be proper for this court to require this defendant to appoint any person representing it upon whom process of any sort shall be served. That this defendant is now before this court,

submitting to its jurisdiction and represented by counsel, and that the insinuation of the complainant's cross bill that this defendant will act contumaceously is unwarranted and should not receive a colorable sanction by this court. And this defendant says that should this defendant attempt to evade or defy any of the lawful process or directions of this court, this court can then vindicate its authority by the dismissal of this defendant's original bill or such other procedure as may be lawful.

(1503) And for further answer to the said cross bill this defendant says:

That Julia Rengifo is, as the national representative of the defendant in the United States, and as its agent *ad hoc*, fully authorized and empowered by this defendant, the Republic of Colombia, to sign this answer in its name and to make oath thereto on its behalf.

And finally this defendant says:

That the pretended award of October 22, 1897, made by the said Haupt and Schramme is totally invalid and void by reason of the matters set forth at length in the original bill herein (all of which are hereby referred to and made part of this answer), as well as by reason of other matters hereinbefore in this answer set forth; notwithstanding all and singular the averments of the answer of defendants to the original bill, as well as the averments of the said defendants in the cross bill filed herein.

And this defendant submits to the court that the said complainants have not in and by their cross bill shown themselves entitled to any relief in this cause save and except to the discovery prayed and by this answer fully and freely accorded.

THE REPUBLIC OF COLOMBIA,
By its duly autorized agent,
(Signed.) JULIO RENGIFO,
Charge d'Affaires ad interim of the Republic of Colombia, in the United States of America.

CALDERON CARLISLE,
WILLIAM G. JOHNSON,
Solicitors for the Defendant.

EDWIN MAXWELL,
Of Counsel.

CITY OF WASHINGTON, }
(1504) District of Columbia, }

I do solemnly swear that I have read the annexed and

aforegoing answer of the Republic of Colombia, defendant, to the cross-bill of the Cauca Company and the Colombian Construction and Improvement Company, complainants, and know the contents thereof: and that the facts therein stated as true are true, and those stated on information and belief I verily believe to be true.

(Signed.) JULIO RENGIFO.

Subscribed and sworn to before me this 8th day of June, 1898.

[Seal.] OSCAR LUCKETT,
Notary Public.

EXHIBIT No. I.

(1505) Resolution passed on the 23d of January, 1896, relating to the railway from Buenaventura to Manizales.

Treasury Department, Bogota, January 23d, 1896.

Whereas, Mr. James L. Cherry, duly authorized as attorney for "The Cauca Company," as it appears from a power of attorney granted by said Company in the city, county and State of Ney York, United States of America, on the 23d day of October, 1895, before Mr. Julio C. Ponce de Leon, notary public of the said city and county, an authenticated copy of which power has been presented at this Department, wherein Mr. Cherry informs this Department that he is willing to make a friendly agreement as a representative of aforesaid Company for the purpose of arriving at a decision in the pending controversies between the Government and the said "Cauca Company," relating to the fulfillment of the obligations agreed upon by both parties in accordance with the contract made on the 27th day of August, 1890, concerning the construction of a railroad from Buenaventura to Manizales, an agreement which, while possibly beneficial to both parties, yet can not be immediately carried out because the Government lacks power to act on the matter.

Therefore, it is resolved:

1. To declare suspended the effects of the resolution passed on the 16th day of October, 1895, wherein is declared lapsed the contract of 27th August of 1890, relating to the construction of a railroad from Buenaventura to Manizales, until the next Congress shall decide whether or not it will authorize the Government to enter into a friendly agreement with "The Cauca Company."

If Congress does not authorize such an agreement, or "The Cauca Company" does not accept the basis which Congress may mark out to the Government for the Com-
(1506) pany's concurrence, the constitution of the Tribunal of Arbitration shall be proceeded with in conformity with Article 37 of the aforesaid contract, each party being free to take all the time that may be necessary for the establishment of said Tribunal.

2. Meantime both parties shall continue to fulfill the obligations of said contract. The guaranty of interests, corresponding to the year 1895, shall be paid in accordance with the liquidation made in this Deprrtment in view of the documents that the case may require.

3. It is understood that the suspension of the effects of the lapse referred to, which suspension has for its object the procuring of a friendly settlement of the differences existing in the fulfillment of the contract with the intervention of Congress, does not argue either in favor or against any of the parties nor affect the rights that each of them may in due time claim before the Court of Arbitration.

Be this resolution communicated to the attorney of "The Cauca Company," so that if he accepts this agreement he shall sign the acceptance thereof, and the same is hereby ordered to be published.

The Sub-secretary, in charge of the Department.

JUSTINIANO CANON.

BOGOTA, January 23rd, 1896.

I accept in all its parts the above resolution.

The Attorney of "The Cauca Company."

JAMES L. CHERRY.

REPLICATION TO ANSWER TO CROSS-BILL.

Filed 29 day of July, 1898.

L. B. Dellicker, Clerk C. C. U. S. D., W. Va.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(1507) DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

The Cauca Company and the Columbian Construction & Improvement Company, Complainants, *vs.* The Republic of Colombia, Defendant.	In Equity.

The replication of said complainants in above cause to the answer of the said Republic of Colombia, defendant.

These repliants, saving and reserving all advantages of exception to the manifold insufficiences of said answer, for replication thereto say that they will aver and prove their said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore they pray relief as in their said cross-bill set forth.

(Signed.) COWEN, CROSS & BOND,
Sols. for Complainants in Cross-bill.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1508) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant, *vs.* The Cauca Company and The Colombian Construction and Improvement Company, Defendant.	In Equity.

Memorandum by the court for decree, on the exceptions heretofore filed by the complainant to the joint and separate answer of the defendants herein.

The court has considered the exceptions filed by complainants to the joint and separate answer of the defendants as also the argument of counsel relating thereto. A decree will be entered overruling all of said exceptions, except that one relating to the last portion of the 35th paragraph of the answer which was sustained by the order entered in this cause on June 8, 1898.

(Signed.) NATHAN GOFF.
September 12th, 1898.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1509) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

This cause coming on to be heard upon the exceptions filed by the complainant to the joint and separate answers of the defeadants, and having been argued by counsel and considered by the court, it is, this 28th day of January, 1899, adjudged, ordered and decreed that all of said exceptions except that one relating to the last portion of the thirty-fifth paragraph of the answer which was sustained by the order entered in this cause on June 8th, 1898, be and the same are hereby overruled.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge.

MOTION TO DISMISS BILL OF COMPLAINT.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(1510) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complaint,
vs.
The Cauca Company and the Colombian Construction and Improvement Company. In Equity.

The defendants, the Cauca Company and the Colombian Construction and Improvement Company, respectfully move the court to dismiss the bill of complaint filed by said complainant on or about the 10th day of December, 1897, for that the said complainant has not filed a replication to the answer of the defendants herein; said answer having been filed upon the 7th day of March, 1898.

The exceptions to defendants' answer filed by the complainant at April Rules, 1898, having been overruled by this Honorable Court on the 12th day of September, 1898.

(Signed.) COWEN, CROSS & BOND,
Solicitors for Defendants.

ORDER OF COURT.

Upon the foregoing motion, it is this 20th day of March, 1899, ordered by the court that the same be granted unless cause to the contrary be shown by the said complainant on or before the 27th day of March, 1899: Provided a certified copy of said motion and this order be served upon the counsel for the complainant on or before the 24th day of March, 1899.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1511) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia,
vs.
The Cauca Company and the Colombian Construction and Improvement Company.

This cause coming on to be heard on the rule to show cause why the bill in this cause should not be dismissed for failure to file a replication herein by the complainant, and being argued by counsel & considered by the court, it is this 15th day of May, 1899, by the court ordered that the cause shown by the complainant is declared to be sufficient and leave is hereby given to complainant to file the said replication as of the day when the same was due under the court's rules and practice & that complainant be & it is hereby allowed four months from this 15th day of May, 1899, within which to take testimony in support of the allegations of the bill of complaint herein and leave is hereby given to the defendants herein to proceed with the taking of testimony in their behalf, if so advised, during said period of four monlhs, without prejudice to the right of said defendants to take further testimony after the closing of the evidence of complainant.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge.

May 15th, 1899.

REPLICATION OF COMPLAINANT.

Filed 15 day of May, 1899.

L. B. Dellicker, Clerk C. C. U. S., D. W. Va.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1512) FOURTH CIRCUIT DISTRICT OF WEST VIRGINIA,
AT CLARKSBURG.

The Republic of Colombia, Complainant
vs.
The Cauca Company and The Colombian Construction and Improvement Company, Defendants.

The replication of the complainant, the Republic of Colombia, in the above cause, to the answer of the Cauca Company and the Colombian Construction and Improvement Company, defendants.

This repliant, by leave of the court first had and obtained under the order passed this fifteenth day of May, 1899, saving and reserving all advantage of exception to the manifold insufficiencies of said answer, for replication thereto says:

That it will aver and prove its said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore it prays relief as in its said original bill herein set forth.

CARLISLE & JOHNSON,
Solicitors for Complainant.

DEPOSITIONS TAKEN AT BOSTON, MASSACHUSETTS, UNDER STIPULATION OF COUNSEL.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(1513) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and The Colombian Construction and Improvement Company, Defendants. } In Equity.

STATE OF MASSACHUSETTS, City of Boston, } *ss:*

Be it remembered that on August twenty-second, 1899, at eleven o'clock A. M., under the stipulation of counsel for complainant and defendants in a certain cause pending in the Circuit Court of the United States for the District of

West Virginia, wherein the Republic of Colombia is complainant and the Cauca Company and the Colombian Construction and Improvement Company are defendants, before me, a notary public in and for the Commonwealth of Massachusetts, appeared at the Hotel Touraine, in said city, the following persons: Messrs. Calderon Carlisle and William G. Johnson, counsel for complainant; Messrs. E. J. D. Cross, John W. Beaumont and Edward H. Murphy, of counsel for defendants; William F. Murray, the stenographer engaged by me, and Mr. Christian F. Schramme.

And thereupon, by the consent of all said counsel, the session was adjourned until Wednesday, August 23, 1899, at eleven o'clock A. M., at the same place.

And be it further remembered that on the twenty-third day of August, 1899, at eleven A. M., at the said place, all the said mentioned parties met pursuant to adjournment, (1514) and the taking of testimony under the stipulations of counsel thereupon began, the said stipulations being hereto annexed, and being as follows, to-wit:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and The Colombian Construction and Improvement Company, Defendants.

It is hereby stipulated and agreed, by and between the complainant and the defendants in the above entitled cause, through their respective counsel and solicitors, that the testimony in behalf of complainant, of such witnesses as may then be produced, be taken at the Hotel Touraine in the city of Boston, State of Massachusetts, beginning at eleven o'clock, A. M., on the twenty-second day of August, and proceeding from day to day until completed, before a notary public and stenographer, to be agreed upon by the counsel of the complainant and defendants. That the depositions of the witnesses, instead of being reduced to writing in the presence of the witnesses, may be taken down stenographically upon the oral examination and cross-examination of the said witnesses by counsel and by the stenographer transcribed into typewriting, and when so transcribed, be by said stenographer exhibited to and read over by said witnesses, and by such witnesses then subscribed. That the said depositions of all the witnesses, so taken and transcribed as aforesaid, together with all books, papers or other exhibits which may be offered in evidenbe,

shall be, by the said stenographer, sealed up, and by him addressed to the Clerk of the United States Circuit Court for the District of West Virginia, at Clarksburg, West Virginia, with the title of this cause endorsed on the outer (1515) cover thereof, and by said stenographer sent prepaid by mail or express to the said clerk.

That the said evidence shall thereupon be admitted as evidence in this cause, without other objection than such as may be made by counsel of the respective parties at the time the same is offered before the stenographer, all which objections shall be taken down stenographically by the stenographer when made, and by him transcribed with the evidence to which they relate, in the place in the proceedings in which made.

It is further agreed that the place of taking said testimony may be changed by consent of counsel of all parties to any other place than that named in this stipulation.

It is further stipulated that the taking of testimony shall not begin earlier than nine-thirty A. M. on any day, nor extend later than six P. M. on any day, except by agreement of counsel for all parties.

It is further stipulated that, if for any reason the signature of any witness to his deposition, after such deposition is transcribed, can not be had, such deposition shall be returned with all other evidence in like manner and with like effect as if the same had been signed by such witness, and the fact of the inability to secure the signature of any such witness shall be noted on his said deposition by the stenographer. Should any witness refuse to sign any deposition, that fact, together with the reason, if any, given by the witness for such refusal, shall be, by the stenographer, noted on such deposition.

CARLISLE & JOHNSON,
Solrs. for Complt.

COWEN, CROSS & BOND,
Solrs. for Defts.

August 2, 1899.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1516) DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants.

Whereas, by the stipulation of counsel for complainant and defendants, the designation of the person to take the deposition of witnesses was left to subsequent agreement of counsel; and

Whereas, counsel for all parties agreed upon Albert Poor, Esq., a notary public, of Boston, Massachusetts, and the said Albert Poor not being a stenographer, counsel for all parties agreed that said Poor should select a competent stenographer to take down and transcribe the testimony, and the said Poor has selected William F. Murray, Esq., of Boston, Massachusetts, a stenographer for that purpose, it is, this twenty-second day of August, 1899, stipulated and agreed by counsel that the taking of said deposition be had before the said Albert Poor and the said William F. Murray, the latter acting as stenographer, and as such to write out the depositions and present the same to the witnesses for signature and to attest their signatures thereto.

That the said stenographer shall append to the depositions his certificate that the same have been correctly taken down and transcribed, and the whole depositions shall be returned by mail or express, at his option, under the hand and notarial seal of the said Albert Poor, Esq., to the clerk of the Circuit Court of the United States for the District of West Virginia, at Clarksburg, West Virginia.

CARLISLE & JOHNSON,
Solrs. for Complainant.
COWEN, CROSS & BOND,
Solrs. for Defts.

(1517) And thereupon counsel for complainant and defendants directed the stenographer to enter the following stipulation:

It is hereby stipulated and agreed between counsel for the parties that the depositions now being taken under the stipulation dated August 2nd, 1899, may be used at the option of either party as evidence on the issues made on the cross-bill as well as on the original bill.

And thereupon the taking of depositions was proceeded with from day to day, as hereinafter set forth, witnesses being called by counsel for the complainant, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in response to such questions as might be propounded to them by the counsel for the respective parties, and in answer to questions propounded by counsel for complainant and defendants, testified as hereinafter fully and *verbatim* set forth, to-wit:

MANUEL H. PENA, being produced as a witness of lawful age, for and on behalf of the complainant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, did depose and say as follows:

Q. (By Mr. JOHNSON:) Mr. Pena, I would like you to state when you were last in the Republic of Colombia? A. When I left it?

Q. Yes, sir. A. I left on the first day of July.

Q. The first of July of the present year? A. Yes, sir.

Q. Were you in Bogota shortly before the first of July? A. Yes; I was some months before in the city of Bogota.

Q. When did you leave Bogota? A. I left Bogota on the afternoon of the first day of July.

Q. I will ask you to state whether or not you received from the officers of the Government any papers to bring to the counsel for the Government in the present litigation? A. I received from the Minister—I received from an officer of the Minister of Hacienda—some papers.

Q. I will ask you to look at this package of papers and (1518) and state whether or not you received those papers from that officer? (Large envelope containing papers handed to witness, who examined same.) A. Yes, sir; I received those same papers from the officer of the Minister of Hacienda of the Republic of Colombia.

Mr. CROSS: Are you going to introduce those?

Mr. JOHNSON: Yes—I am going to offer some of them later on.

Mr. CROSS: Our usage in taking testimony, I think, is that before the papers are shown to witness they are shown to counsel.

Mr. JOHNSON: That may be the practice in Baltimore, but we never practice it in Washington.

Mr. CROSS: Note an objection, Mr. Stenographer, that the papers shown to the witness were not described or identified and have not been tendered as evidence in the cause and have not been shown to the counsel for defendants prior to their submission to the witness.

Q. Now, Mr. Pena, will you state, please, when, after you received these papers, where you took them? A. I was in Bogota, and I received a letter——

Q. No; I asked you not whether you received a letter. Where did you take those papers after you got them? A. Where did I receive them?

Q. Where did you take them—where did you carry them? A. After the time I received them, you mean to say?

Q. Yes. A. Well, I take them with me all the time, and then I delivered them into the hands of the Minister of Colombia in Washington.

Q. Washington in the United States? A. Washington, D. C., in the United States.

Q. Yes; now did you subsequently, in company with the Minister of Colombia at Washington, carry those papers and deliver them to any other person? A. No, only as I (1519) say, I kept them in my own trunk until I took them from there and delivered them to the Minister.

Q. Where did you deliver them to the Minister?

Mr. Cross: Mr. Stenographer, the question is objected to, as the papers have not been identified or described.

Q. Where did you deliver them to the Minister? A. I delivered the full package at the hotel where I lived at in Washington, and then they were taken with me and we went down with the Minister to Messrs. Carlisle & Johnson's office with them.

Q. The present counsel for the Government? A. Yes, sir; the present counsel for the Republic.

Q. And were the papers there delivered to the counsel? A. I saw that Mr. Calderon delivered them in my presence to the counsel.

Q. You identify those as the same? A. As the same.

Q. As the same papers? A. As the same papers.

Mr. Cross: I object. The papers mentioned have not been identified by the witness or described or marked.

Mr. Johnson: Now, Mr. Poor (the notary), I will deliver to you all of these papers identified by the witness as having been brought here by him, and request that you will mark each one with your initials and such proper memorandum as you see fit.

Mr. Poor: They better be numbered right in order. In the meantime, I could be marking these in a separate room.

(The notary took the package of papers.)

Q. Mr. Pena, I now hand you another batch of papers, and ask you to state whether or not these papers were given into your possession; and, if so, where and by whom?

(Witness examined papers.)

A. Will you kindly repeat the question?

Mr. CROSS: I take objection, also, the same as before, as the papers submitted to the witness were not identified, marked, or described, or submitted to counsel prior to showing the same to witness.

(1520) The WITNESS: Well, this bunch of papers was given to me by the same officer of the Minister of Hacienda as was stated before; the same officer that delivered to me the other bunch.

Q. I will ask you to state where you took these papers, which you have now identified, after they were given to you? A. I delivered them to Mr. Climaco Calderon, the Minister of Colombia, in Washington, in the hotel where I resided.

Q. Did you make that delivery to him at the same time that you delivered the other batch of papers that you identified? A. At the same time.

Q. Can you state what was subsequently done with them? A. Can you please repeat that?

Q. Can you state what was done with them after you delivered them to Mr. Calneron? A. Yes, I saw that he delivered them to Messrs. Carlisle and Johnson in their office that day—Messrs. Carlisle and Johnson, the counsel for the Government of Colombia.

Mr. JOHNSON: This batch of papers identified by Mr. Pena are delivered to the notary, Mr. Poor, to be numbered and marked by him as the second batch of papers identified by witness and by him brought from Colombia and delivered to the counsel for the Government in this case.

Direct examination closed on this branch.

Mr. CROSS: Cross-examination of Mr. Pena is waived on his evidence hitherto adduced.

MANUEL H. PENA.

Witness:

WILLIAM F. MURRAY.

ALFONSO DELGADO, being produced as a witness of lawful age for and on behalf of the complainant and being

first duly sworn to tell the truth, the whole truth and nothing but the truth, did depose and say as follows:

Q. Mr. Delgado, where do you live? A. Now?

Q. Yes, sir. A. I live now in New Orleans.

(1521) Q. Do you occupy any official position? A. I am the Consul of the Republic of Colombia.

Q. What is your home residence? A. In Bogota, the capital of the Republic.

Q. Did you ever know in Bogota a Mr. Victor Mallarino? A. Yes, sir.

Q. Were you any relative of his? A. Yes, sir. He is a brother of my mother.

Q. A brother of your mother? A. A brother of my mother, yes, sir.

Q. How long have you known him? A. Oh, I know him about 15 years. More than 15 years. I know him more than 15 years ago.

Q. Were you much in his company? A. I was in his college three years.

Q. In his college? A. In his college.

Q. Was he a professor? A. He was a teacher. He was a director of a private college.

Q. Did you ever see him write? A. Yes, sir; several times.

Q. You saw him write several times? A. Yes, sir. I saw him write many times in that time. He was my professor of English and of the French language, and he very often wrote and I saw him. His letters are not to be confounded with anyone else's, because he writes very well, very rapidly, and I have seen it several times.

Q. You have seen him many times writing, have you? A. Yes, sir.

Q. Have you corresponded with him? A. I have received from him perhaps 2 or 3 letters or cards.

Q. I will ask you to look at the last two pages of Exhibit 31 A. P., being the one of the documents indentified by Mr. Pena and marked by the notary, and state whether or not that writing and signature are the writing of Mr. Victor Mallarino.

(Witness, examining paper.)

(1522) Mr. CROSS: Did I understand you to say the last two pages?

Mr. JOHNSON: Yes, sir. The other part is in somebody else's writing.

WITNESS: This is my uncle's letter and signature, sir.

Mr. JOHNSON: The other thing is Mr. Cherry's. I am

going to prove it by another witness and then I will offer it in evidence.

Mr. CARLISLE: These documents of Mallarino are from 31 A. P., which is the one he has looked at, to 115, A. P. inclusive.

Q. Look at Exhibit 32 A. P. and state if that is in the handwriting of Mr. Victor Mallarino.

Mr. MURPHY: If you intend to offer them as job lots, we shall have to object to them as job lots.

WITNESS: This is my uncle's letter and signature.

Q. Look at Exhibit 33 A. P. and state if that is in his handwriting?

Mr. CROSS: Kindly note, Mr. Stenographer, all these papers are produced, subject to our right to object to the same as soon as we see them.

Mr. JOHNSON: You do not object to them, I suppose, if we do not offer them in evidence?

Mr. CROSS: No.

WITNESS: Yes.

Q. Look at Exhibit 34 A. P., and state whether or not that is Mr. Mallarino's handwriting. A. Yes, sir.

Q. Will you look at Exhibit 36 A. P. and state if that is in his handwriting? A. Yes, sir.

Q. Look at the memoraudum dated Bogata, August 10, 1899, on the back of Exhibit 37 A. P., and state if that is in his handwriting? A. The signature is, yes.

Q. The signature is? A. The signature is, yes.

Q. Look at Exhibit 38 A. P., and state if that is in his handwriting? A. Yes.

Q. Look at Exhibit 39 A. P., and state if that is in your uncle's handwriting? A. Yes, sir.

(1523) Q. Look at Exhibit 41 A, P., and state if that is Mr. Victor Mallarino's handwriting? A. Yes, sir.

Q. Look at Exhibit 44 A. P. Is that in Mr. Mallarino's handwriting? A. Yes, sir.

Q. Look at Exhibit 45 A. P., and state if that is in his handwriting? A. Yes, sir.

Q. Look at Exhibit 46 A. P. Is that in his handwriting? A. Yes, sir.

Q. Look at Exhibit 47 A. P., and state if that is in his handwriting? A. Yes, sir.

Q. Is Exhibit 49 A. P. in his handwriting? A. Yes, sir.

Q. Is Exhibit 51 A. P. in his handwriting? A. Yes, sir.

Q. Is Exhibit 52 A. P. in his handwriting? A. Yes, sir.

Q. Is Exhibit 53 A. P. in his handwriting? A. Yes, sir.

Q. Exhibit 55 A. P. Is that his handwriting? A. Yes, sir.

Q. Exhibit 56 A. P. Is that his handwriting? A. Yes, sir.

Q. Exhibit 58 A. P. Is that his handwriting? A. Yes, sir.

Q. Exhibit 59 A. P. State if that is his handwriting. A. Yes, sir.

Q. Exhibit 62 A. P. State if that is his handwriting. A. Yes, sir.

Q. I hand you Exhibits 63 A. P., 65 A. P., 66 A. P., 67 A. P. and 68 A. P. Will you look at those and state whether or not they are in the handwriting of Mr. Victor Mallarino? A. Yes, sir.

Q. I hand you Exhibits 69 A. P., 70 A. P., 71 A. P., 72 A. P., 73 A. P., 74 A. P., 75 A. P., 76 A. P., 77 A. P., 78 A. P., 79 A. P., and ask you to look at those and state whether or not they are in the handwriting of your uncle, Mr. Victor Mallarino. A. Yes, sir.

Q. Look at Exhibits 81 A. P., 82 A. P., 83 A. P., 84 A. P., and state if they are in the handwriting of your uncle, Mr. Victor Mallarino? A. Yes, sir.

(1524) Q. Look at Exhibits 87 A. P., 88 A. P., 89 A. P., 90 A. P., and state if they are in the handwriting of your uncle, Mr. Victor Mallarino? A. Yes, sir.

Q. I hand you now Exhibit 92 A. P. State if that is in Mr. Victor Mallarino's handwriting. A. Yes, sir.

Q. Look at Exhibits 100 A. P., 101 A. P., 102 A. P., 104 A. P., 105 A. P., 107 A. P., 108 A. P., 109 A. P., 110 A. P., 111 A. P., 112 A. P., 113 A. P., 114 A. P., 115 A. P. and state whether or not they are in the handwriting of your uncle, Mr. Victor Mallarino. A. Yes, sir.

Q. Now, Mr. Delgado, will you look at Exhibits 35 A. P., 40 A. P., 42 A. P., 43 A. P., 50 A. P., 54 A. P., 57 A. P., 60 A. P., 61 A. P., 64 A. P., 80 A. P., 85 A. P., 86 A. P., 91 A. P., 93 A. P., 94 A. P., 95 A. P., 96 A. P., 97 A. P., 98 A. P., 99 A. P., 103 A. P. 106 A. P. Look at those and state whether or not those are in the handwriting of your uncle, Mr. Victor Mallarino.

Mr. MURPHY: Those are the ones you missed as you went along, aren't they?

Mr. JOHNSON: Yes, sir.

Mr. MURPHY: I noticed the omission as you went along.

WITNESS: Exhibit 61 A. P. has not been written by him, only signed. It has only been signed by him and not

written. The writing I do not know whose writing it is—the letter.

Q. The signature only is his? A. The signature is his—it says "Victor Mallarino." The other exhibits are all written by him all right.

Mr. JOHNSON: Now, Mr. Stenographer, will you take this? It is admitted by counsel for the defendants that the signature of James L. Cherry on the first page of Exhibit 31 A. P. is the genuine signature of that gentleman.

Q. Mr. Delgado, is this Mr. Victor Mallarino, your uncle, the same Mr. Victor Mallarino who was the attorney in fact of Mr. Cherry and of the Cauca Railroad Company in Bogata? A. Yes, sir.

(1525) Q. You knew of his being connected with that business? A. Yes, sir.

Q. Did you know Mr. M. A. Caro, who was the Vice-President of the Republic of Colombia? A. Yes, sir.

Q. Was he in any way related to you? A. Mr. Caro is a brother of Margarita Caro, the widow of Mr. Charles Holguin, first cousin of my mother.

Q. What relation was your uncle, Mr. Victor Mallarino, to Mr. Caro? A. Mr. Mallarino's wife is sister of Mr. Charles Holguin.

Q. Mr. Holguin? A. Yes, sir. Mr. Holguin is no relation—Mr. Mallarino has no relationship with Mr. Caro.

Q. He is not a blood relation, you mean? A. No, sir.

Q. The connection is by marriage? A. By marriage, that chain that I speak of.

Q. Is this Mr. Holguin the gentleman who was at one time the President of the Republic? A. Yes, sir; for four years; just before Mr. Caro—from 1888 till 1892.

Q. I want to see if I understand your statement correctly, that Mr. Caro Mr. Victor Mallarino had married into the same family—members of the same family? A. No, sir—Mr. Holguin and Mr. Mallarino? Yes.

Q. Mr. Holguin and Mr. Mallarino had married into the same family? A. Yes, sir, and they are cousins—Mr. Mallarino and Mr. Holguin. Mr. Holguin is a first cousin of Mr. Mallarino.

Mr. CROSS: I object to the relevancy of this class of testimony.

WITNESS: But Mr. Caro has no relationship to Mr. Mallarino.

Witness: ALFONSO DELGADO.

WILLIAM F. MURRY.

Mr. JOHNSON: That closes his testimony.

Mr. CROSS: The documents numbered as given in the testimony of the witnesses have been presented to him for (1526) the purpose of identification solely, and counsel for defendants reserve the right to object to the same when they are offered in evidence, and also the right to further cross-examine the witness as to the same when they are presented.

Recess taken at 1:30 till 2:30.

AFTERNOON SESSION.

Mr. ALFONSO DELGADO (resumed):

Mr. JOHNSON: We will offer in evidence Exhibits 31 A. P., 35 A. P., 40 A. P., 42 A. P., 43 A. P., 50 A. P., 54 A. P., 57 A. P., 60 A. P., 61 A. P., 64 A. P., 80 A. P., 85 A. P., 86 A. P., 91 A. P., 93 A. P., 94 A. P., 95 A. P., 96 A. P., 97 A. P., 98 A. P., 99 A. P., 103 A. P., 106 A. P.

Mr. CROSS: Now, will you let us have them?

(Exhibits handed counsel for defendants and examined.)

Mr. CROSS: Counsel for defendants object to the introduction of exhibits under the foregoing, to-wit: Exhibits numbers 31 A. P., 35 A. P., 40 A. P., 42 A. P., 43 A. P., 50 A. P., 54 A. P., 57 A. P., 60 A. P., 61 A. P., 64 A. P., 80 A. P., 85 A. P., 86 A. P., 91 A. P., 93 A. P., 94 A. P., 95 A. P., 96 A. P., 97 A. P., 98 A. P., 99 A. P., 103 A. P. and 106 A. P., in that the same and each of them are not relevant to the issues in this cause.

Mr. MURPHY: And further objection in that they are incompetent, immaterial, irrelevant and not within the issues.

Mr. CROSS: Nothing further, Mr. Bogado [Delgado].

(Cross examination waived.)

Mr. JOHNSON: That is all, Mr. Delgado.

HAROLD R. MILLER, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, did depose and say as follows:

Q. (By Mr. JOHNSON:) Mr. Miller, have you ever been in Bogota? A. Yes, sir; I have been in Bogota four times.

(1527) Q. When were you there the first time? A. In December of 1894.

Q. Did you ever know Mr. James L. Cherry, who was the attorney and representative of the Cauca Company, engaged in the construction of a railroad in Colombia? A. Yes, sir; I met Mr. Cherry in Bogota at the end of the year 1896.

Q. Did you see much of him? A. He lived in the same hotel in which I was at that time.

Q. Did you ever see him anywhere else? A. I used to meet him in different parts of Bogota.

Q. Did you ever see him write? A. Yes, sir.

Q. I will hand you "Exhibit No. 1 A. P.," which has been marked by the Commissioner, being one of the papers produced by Mr. Pena, and ask you to look at the signature and state whether or not that is the signature of Mr. Cherry. A. Yes, sir; this is the signature of Mr. Cherry. I know it.

Mr. MURPHY: Do you think you have thoroughly laid the foundation for that question—if he had seen him write?

Q. How many times have you ever seen him write? A. I said I have seen him write. I don't remember how many times, but I should say several times.

Q. What have you ever seen him write? A. I have seen him write telegrams. I have also seen letters from him addressed to Mr. Cisneros.

Q. Did you ever see him write anything else but telegrams? A. Not that I remember of.

Q. Did you ever meet him at a club—the German Club there? A. Yes, sir; I have seen Mr. Cherry at the Club Germania.

Q. Did you ever see him write there? A. I believe I have.

Q. What did he write? A. He may have signed cards there or anything he ordered—lunch or anything like that.

(1528) Q. That is, what you have seen him write you mean was the check at the table? A. Yes, sir.

Q. Do you know his signature? A. Certainly.

Q. What? A. Yes, sir; certainly.

Mr. CROSS: You do not offer that in evidence?

Mr. JOHNSON: Not now.

Q. I hand you "Exhibit 8, A. P.," being one of the papers marked by the Commissioner, and request you to look at the signature to that and state if that is Mr. Cherry's handwriting? A. It is; I believe it to be at least.

Q. I hand you "Exhibit 11, A. P.," of the same papers marked by the Commissioner, and ask you to look at the name of J. L. Cherry, on that paper and state whether or not in your opinion, that is Cherry's handwriting? A. It is, to the best of my belief.

Q. Look at the three signatures on "Exhibit 2, A. P.," of J. L. Cherry and state whether or not in your opinion those are his signatures? A. Yes, sir; they seem to be the same as the others.

Q. I now hand you Exhibits "3, A. P.," "4, A. P.," "5, A. P.," "6, A. P.," "7, A. P." "9, A. P.," "12, A. P.," "13, A. P.," "14, A. P." "15, A. P.," "16, A. P.," "17, A. P.," "18, A. P." "19, A. P.," "20, A. P.," "21, A. P., "22, A. P.," "23, A. P.," "24, A. P." "25, A. P.," "26, A. P.," "27, A. P." "28, A. P." "29, A. P.," "30, A. P.," and ask you to look at all of the signatures "J. L. Cherry" on each of those papers and state whether or not in your opinion they are the signatures of Mr. James L. Cherry? A. Yes, sir; to the best of my belief they are all signed by Mr. Cherry.

Mr. JOHNSON: I now offer in evidence "Exhibit 1, A P.," "Exhibit 8, A. P.," "Exhibit 11, A. P." I just offered these three now; I offer these three—Nos. 1, 8 and 11.

Mr. MURPHY: Do I understand the others have been offered for identification only—simply for identification?

Mr. JOHNSON: That is all. Simply to have him prove the handwriting, that is all.

(1529) Mr. CROSS: Mr. Stenographer, note an objection of the same kind as we had—we object to these as immaterial, irrelevant and incompetent and not within the issues (Nos. 1, 8 and 11). We also reserve the right to make further objections at to-morrow's session after we have made our examinations of the papers and after we have seen the translations.

CROSS-EXAMINATION.

Q. (By Mr. CROSS:) Mr. Miller, you say you saw Mr. Cherry at Bogota at the end of 1896? A. Yes, sir.

Q. He is dead now, isn't he? A. Yes, sir.

Q. Didn't he die early in 1897? A. Yes, sir.

HAROLD R. MILLER.

Witness:

WILLIAM F. MURRAY.

BOSTON, MASS., Thursday, August 24, 1899.

ARTHUR W. FERGUSSON, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, did depose and say as follows:

Q. (By Mr. JOHNSON:) Mr. Fergusson, will you please state your age and what profession you have. A. I am 39 years of age, going on 40. I am an attorney at law and a translator.

Q. Where do you reside? A. I reside in Washington, D. C.

Q. Have you an acquaintaince with the Spanish language? A. Yes, sir.

Q. I wish you would please state how you acquired it, and the extent and range of your experience in it. A. Well, I was born in California, and at about the age of a year and a half my parents took me to Mexico, and with a short interval—not more than a year, perhaps—I was there (1530) until I was 10 years of age. I then returned to my native State to be educated, and went back to the Territory of Lower California; that is, I did not go back to it, but I went to the territory of Lower California at the age of 17, remaining about two years; then came back to California again, and at the age of 22 went to the City of Mexico, where I remained about two years, and thence removed to Washington, where I have resided since.

Q. You mean the city of Washington? A. Yes, sir; the City of Washington, D. C.

Q. When did you become a member of the Bar of the District of Columbia? A. In 1886.

Q. Was your father acquainted with the Spanish language? A. Oh, yes; he lived in Mexico 34 years, I should say.

Q. Did he speak Spanish in his family. A. Perfectly. Always. I had three sisters and two brothers who were born in the Republic of Mexico.

Q. What language did they speak? A. Spanish.

Q. What was the conversation of the family, including yourself, up to the time you went back to California. A. Spanish always.

Q. And after you left California what was the language which you employed? A. When I returned, you mean, to my family?

Q. Yes, sir. A. Spanish.

Q. During the time you were in Mexico and in Lower California, after you were 17 years of age, state whether or not you had occasion to speak both languages and to what

extent. A. Well, I was employed by Mr. Joseph P. Hale, who was an exporter of Orchilla, in Lower California, as clerk, and also in charge of his camp, or in charge of one of his camps with Yaqui and Mayo Indians, and of course I had to use both languages, as my reports to Mr. Hale were always made in English and Spanish.

Q. Did you have anything to do with any railroad (1531) business in Mexico? A. Oh, yes, I was on the Mexican Central Railroad about six months in 1882 and 1883 as car accountant.

Q. Did you have any occasion to use the Spanish language in that employ? A. Both languages—reports had to be sent here to Boston in English, so I had to use both English and Spanish. Reports had to be sent here to Boston in English.

Q. Who converted the Spanish reports into English for the Boston officers? A. So far as that department of the Superintendent of Transportation was concerned, I did.

Q. And your original work there you kept in Spanish? A. Oh, yes. All the conductors handed their reports in on forms that were in Spanish.

Q. And you translated that into English *for* the Boston officers? A. I transferred it to columns on papers that had English headings for the Boston office. But I did a lot of corresponding also for the Boston office at the same time in English and Spanish.

Q. Now since you discontinued business in Mexico and returned in Washington, what experience have you had there in the Spanish language in the city of Washington? A. Well, I was the official interpreter of the Pan-American Congress, so-called.

Q. And what countries were represented in that conference? A. At that time the 18 free republics of the New World.

Q. Of the Western Hemisphere? What was the language of those? A. With one exception—with two exceptions, because the United States did not speak Spanish—all spoke Spanish.

Q. What were the other languages spoken? A. Portuguese, and French for Hayti—that is, three exceptions, as a matter of fact.

Q. And did you have anything to do with translating (1532) in your official capacity English into Spanish and Spanish into English? A. Oh, yes.

Q. To what extent? A. Well, to the extent that at the same time that I was official interpreter I was secretary of three committees of that conference.

Q. Then that was your work? A. Exclusively.

Q. Through what period of time, about? A. From December, 1889, to April 14, 1890.

Q. Now, what other work of that kind did you have? A. I think—well, I continued then in the preparation of the proceedings which have been published in English and Spanish, for some five or six months, and then was appointed the Secretary—one of the secretaries—there were two, of the International American Monetary Commission.

Q. And in that office what did you have to do with the English and Spanish languages? A. Proceedings were always conducted and the reports were kept in the two languages in parallel columns.

Q. Did you edit that report? A. With Dr. Rodrigues.

Q. And did you translate two languages—English into Spanish and Spanish into English in that connection for that body? A. Yes, sir.

Q. Now what other body in Washington were you connected with? A. At or about that same time I was also acting as interpreter for the Intercontinental Railway Commission, when the entire commission—representatives from the South American Republics held their sessions in Washington. That was about 1891, I think.

Q. And what did you have to do with the Spanish and English languages? A. Just the same as with the other commissions.

Q. Translating? A. Yes, and acting as the interpreter.

Q. Now what other body did you have anything to do with? A. The next I think was the United States and (1533) Chilian Claims Commission. I was secretary on the part of the United States for that. That was in 1893.

Q. What did you have to do in the way of translating there? A. Well, there I had to do the same as on the other commissions, and I also had to translate off-hand the legal arguments for Chili.

Q. From Spanish into the English language? A. That was from Spanish into English; and I also had to translate the remarks of the agent of the United States from English into the Spanish language.

Q. You mean you had to translate oral arguments? A. Yes; the oral arguments. And I had to do a great deal of the translating; in fact, I did all the translating of the briefs of the Spanish—I mean of the Chilian agent—into English.

Q. Can you mention any other commission or body in Washington with which you were connected? A. Yes, sir; I was secretary of the United States and Venezuelan Commission in 1894.

Q. And what did you have to do with translating the Spanish language there—Spanish into English and English into Spanish? A. The same as with the others, with the exception that I did not have to translate the arguments there, because they were all in English.

Q. Can you mention any other body with which you were connected? A. I am now the chief translator of the Bureau of American Republics, in Washington.

Q. How long have you been connected with the Bureau of American Republics, in Washington? A. Two years the first of last June.

Q. What South American countries are represented in that Bureau? A. All of them. And Central America and Mexico—all the republics south of the Rio Grande.

Q. And what is theextent of your translations there? A. Every day.

Q. What kind of matters have you had to translate? (1534) A. Why, diplomatic, legal, commercial—correspondence addressed to the Bureau and going from the Bureau.

Q. Have you had anything to do with the translation of documents? A. Oh, yes.

Q. To great or small extent? A. Well, I have had all during these years—I have tanslated contracts and documents for the Costa Rican, the Colombian, the Mexican, the Venezuelan, and for the Chilian government at times.

Q. Have you had anything to do with translations of statutes? A. O, yes.

Q. What, in that connection, have you done? A. I have had to do that in the Bureau

Q. What kind of statutes? A. All kinds. For instance, a large number of railroad concessions from Mexico come in—they have one in every two or three days.

Q. What about general legislation, such as tariff statutes? A. I have translated tariff laws. I have translated, with the assistance of Dr. Guzman, the Dingley Bill into Spanish. I have translated the Chilian, Argentine, Mexican and one or two other tariffs into English.

Q. And have you done that in the course of your official connection with the Bureau? A. With the exception of the Argentine, I think. Yes—official connection—the Argentine was sent to me, as a matter of fact, to be corrected, and I found that it was easier to do the whole thing over again than correct it.

Q. Have you been connected with any other organizations or bodies in Washington than those you have mentioned? A. Not that I recall any. It seems to me that has pretty well filled up the time.

Q. Have you had anything to do with acting as interpreter or translator outside of the United States? A. Yes, sir; on the Peace Conference.

Q. When was that? A. On the first day of October of last year until the 10th day of December.

(1535) Q. What commission do you refer to? A. I refer to the Spanish-American Peace Commission.

Q. Which settled the Treaty of Peace between Spain and the United States? A. Yes; the treaty which was signed on the 10th day of last December at Paris.

Q. What connection did you have with that commission? A. Official interpreter.

Q. And in that connection what were your duties? A. My duties were to convert from English into Spanish and from Spanish into English all of the arguments—all of the proceedings, in fact.

Q. And all documents, also, that passed between the two? A. Every document I translated that went through either side. Every letter that passed between the two Commissions I translated.

Q. Did you also have to make oral translations of the oral arguments? A. Yes, sir. In fact, I might say the whole of the proceedings percolated through my system.

Mr. CROSS: It seems to have agreed with you.

WITNESS: I got fat on it.

Q. You consider yourself an expert and competent translator of the English language into Spanish and of Spanish into English? A. Well, I usually refer to my record for that.

Q. Mr. Fergussion, I will hand you Exhibit 31 A. P., and ask you, please, to translate to the stenographer now taking the depositions the first page and the last sheet which were offered in evidence on yesterday? A. All right. Has that been translated?

Q. No. A. You mean this first page here?

Q. That first page. A. This is addressed (reading and translating into English) "To His Excellency the Minister of Public Works,

PRESENT:

Sir,—I have the honor to bring to the knowledge of your Excellency that for the legal effects of Article 35 of (1536) the contract I have had the satisfaction of concluding with the supreme government for the construction of the Cauca Railroad I have constituted as my attorney in fact in this city Senor don Victor Mallarino. The power

of attorney has been executed in notary's office Number one, in charge of Senor don Jorge Gaitin.

Yours, &c.,

(Signed.) J. L. CHERRY.

Botoga, September 1, 1890.

WITNESS: What is the next one you want?

Q. The last sheet. A. This is dated (reading and translating):

"Bogota, October 8, 1890.

MR MINISTER OF PUBLIC WORKS,

PRESENT:

I have the honor to acknowledge to Your Excellency the receipt of the polite note of your Department, Number 140, in which Your Excellency is pleased to inform me, in my capacity as attorney in fact of Mr. James L. Cherry, that by resolution of the Government, Messrs. Camacho Roldan and Nephew, of New York, have been commissioned to receive and hold on deposit at the disposal of the Government the sum of fifty thousand dollars ($50,000) in American gold, in conformity with the stipulation of the contract concluded with my principal for the construction and operation of the railroad from the Port of Buenaventura to the City of Manizales.

"God preserve Your Excellency,

"(Signed.) VICTOR MALLARINO."

Mr. CROSS: Mr. Stenograper, kindly note an objection to the question and answer as irrelevant, immaterial, incompetent and not within the issues.

Counsel for defendants here announced that they had no further objections to make to the papers offered yesterday than those already named.

(1537) Q. Mr. Fergusson, I hand you Exhibits 1 A. P., 35 A. P., 40 A. P., 42 A. P., 43 A. P., 50 A. P., 54 A. P., 57 A. P., 60 A. P., 61 A. P., 64 A. P., 80 A. P., 85 A. P., 86 A. P., 91 A. P., 93 A. P., 94 A. P., 95 A. P., 96 A. P., 97 A. P., 98 A. P., 99 A. P., 103 A. P. 11 A. P., 106 A. P. Please look at these Exhibits and state whether or not you have made a translation of them into English? A. I made a translation of so many that I don't know. You have all my translations, haven't you?

Q. Did you make translations? A. I made translations.

Q. See if those are the translations which you made of those documents; and, if so, state whether or not they are correct translations (handing papers to witness). A. Yes.

Mr. JOHNSON: My idea is to have Mr. Fergusson take those translations and mark them as the translations—this, for instance, as a translation of exhibit so and so.

Mr. CROSS: There is Exhibit 31 A. P., for instance. Let him take that and mark that as "Translation of Exhibit 31 A. P."

Mr. JOHNSON: Probably the best way would be to arrange them alternately, putting the Spanish exhibit first, and then the English translation of it.

Mr. CROSS: Please note that the objection to the admissibility of the originals is also reserved against the admissibility of the translations.

Mr. JOHNSON: Mr. Cross, we now offer in evidence Exhibit 28 A. P., and our understanding is that counsel for the defendants admit the signatures of Mr. J. L. Cherry and of M. A. Caro thereon to be genuine.

Mr. CROSS: We do. We object to it as irrelevant, incompetent, immaterial and not within the issues; and furthermore, that the Spanish copy of the same was filed by the complainant with his bill of complaint, and marked Exhibit Number 12; which Exhibit Number 12 was conceded by the defendants in their answer to be the document referred to in the bill of complaint. Our objection is (1538) is to duplicating the records in the case. Also note, Mr. Stenographer, Exhibit No. 12 in the Spanish text, which appears on page 46, and following of the bill of complaint.

Q. Mr. Fergusson, I would like to ask you if you have examined Complainant's Exhibit Number 12, Spanish text, which begins on page 46 of the printed bill of complaint in this case? A. Yes, sir.

Q. Have you examined Exhibt 28, A. P., which has just been offered in evidence? A. Yes.

Q. I would like you to state whether or not you have examined Complainant's Exhibit Number 12, English translation, which begins on page 52? A. Yes.

Q. Of the bill of complaint? A. Yes.

Q. I will ask you to state whether or not Complainant's Exhibit Number 12, English translation, is a correct translation of Exhibit 12, Spanish text, and of Exhibit 28, A. P., just offered in evidence? A. I consider it a very good translation of it.

Mr. CROSS: Note an objection to that as immaterial, irrelevant, incompetent and not within the issues.

Q. Is Exhibit 28, A. P., and its equivalent in Complainant's Exhibit Number 12, Spanish text, commencing on page 46 of this (referring to printed book containing "Original Bill of Complaint with Exhibits" handed witness) susceptible of a more literal translation inso English than the translation accompanying the bill of complaint. A. Oh, yes.

Mr. MURPHY: (Same objection.)

Q. I will ask you to state whether or not you have made a translation of this document? A. Yes.

Mr. MURPHY: (Same objection.)

Mr. JOHNSON: Look at the paper which I now hand you and state whether or not that is the translation which you made of that document. A. Yes.

Mr. MURPHY: (Same objection.)

Mr. JOHNSON: Will you please mark this paper?

(1539) (Paper marked by Mr. Fergusson, "Translation Complainant's Exhibit No. 12, Spanish text, and of Exhibit 28 A. P.—A. W. F.")

Mr JOHNSON: Now we will offer this in evidence.

Mr. CROSS: Then we make the same objection, tha it is irrelevant, incompetent, immaterial and not within the issues; and furthermore, as being a departure, wherein there may a difference be urged, from the case set up by the complainant in his bill of complaint by Exhibit No. 12.

Mr. JOHNSON: That is all, Mr. Fergusson.

Q. (By Mr. MURPHY:) You did not make the translation here in this book? A. No.

Mr. JOHNSON: He did not.

Q. (By Mr. CROSS:) You say you did not make the original translation of Exhibit 12 filed with the bill of complaint? A. No, sir.

Mr. JOHNSON: That is all, sir.

A. W. FERGUSSON.

Witness:

WILLIAM F. MURRAY.

JULIAN URIBE, being produced as a witness of lawful age for and on behalf of the complainant, and being first

sworn to tell the truth, the whole truth and nothing but the truth, did depose and say as follows:

Q. (By Mr. JOHNSON:) Mr. Uribe, where do you live? A. I live at Buenaventura.

Q. In what country? A. In Colombia, in the Cauca State.

Q. Are you a native of that country? A. No, sir; I am from Antioquia.

Q. That is also part of Colombia? A. Yes; another part of Colombia.

Q. But you were born in the Republic of Colombia? A. Yes. These two States are in the Republic of Colombia—Antioquia and Cauca.

Q. Have you always lived in Colombia? A. Yes, sir. (1540) Q. What business do you follow: A. Since the year 1878 to this time engineering works.

Q. Are you acquainted with the country from Buenaventura to the City of Cali? A. Yes, sir.

Q. Are you acquainted with the country from the city of Cali to the city of Manizales? A. Yes, sir.

Q. Have you traveled in these sections much? A. Yes, many times.

Q. Were you in the vicinity of Buenaventura in the year 1878? A. Not in the vicinity of that country, because we have very bad roads, and there it is not like it is in this country, but my home at that time was in Tuhia, about 200 miles from Buenaventura.

Q. Did you have occasion to go to Buenaventura in the year 1878? A. Yes, sir.

Q. About what time in that year? A. About June of 1878.

Q About June, 1878. Did you know an engineer named Francisco J. Cisneros. A. Yes, sir.

Q. Were you ever in his employ? A. Ever until 1885, when he suspended the work on the railway.

Q. When did you go in his employ? A. At the end of the month of February, 1878.

Q. February, 1878? A. Yes, sir.

Mr. CROSS: You mean to adduce these transactions that occurred in 1878 between this man and Cisneros?

Mr. JOHNSON: No. I am showing he was employed as an engineer by Mr. Cisneros.

Mr. CROSS: Kindly note an objection as irrelevant, incompetent and immaterial, etc.

Q. What work did Mr. Cisneros begin in 1878.

Mr. CROSS: Same objection.

WITNESS: Drawing preliminary lines.

Q. For what? A. For a railway from Buenaventura to Cali.

(1541) Q. When was the actual work on that road of Mr. Cisneros stopped?

Mr. MURPHY: Same Objection.

WITNESS. I don't remember particularly what the month was, but it was in 1883—probably at the end of the year; in 1883.

Q. In 1883? A. Yes, sir.

Q. Were you in his employ during all that time?

Mr. MURPHY: Same objection.

WITNESS. He quitted the enterprise, I guess, in December, of 1882—the first of the year 1882—and I stayed home more or less two years, and came back in 1885, by the time Mr. Cisneros delivered the place to the Government.

Q. You left in December, 1882? A. Well, probably on that date.

Q. About that? A. About that.

Q. Did you see the work that was done? A. Yes, sir.

Mr. MURPHY: Same objection.

Q. When you first went there in February, 1878, had any work been done on the ground between Buenaventura and Cali?

Mr. MURPHY: Same objection.

Witness. No, sir.

Q. It was in its natural state?

Mr. MURPHY: Same objection.

WITNESS: What is that?

Q. The ground was in its natural state—in the State of nature? A. Oh, yes, yes, sir.

Q. Is Buenaventura situated on the main land? A. No; it is an island. It is on an island.

Q. It is at the seashore? A. On the seashore, yes.

Q. There is a bay there? A. Yes—part of the island is front of a bay.

Q. About what width was the water between the island and the main land?

(1542) Mr. MURPHY: Same objection.

WITNESS: About, in a high tide, 19 feet, more or less.

Q. Deep, you mean? A. Deep.

Q. How wide from the island to the main land? A. Well, I should say about 600 feet.

Q. In February, 1878, was there any bridge between the island and the main land?

Mr. MURPHY: Same objection.

WITNESS: Not a bridge, but when the government built the mule road they constructed some—I don't know what you call it—chiquero, well, some logs just put in in this way (witness indicating the kind of roadway he meant, but being unable to think of the English equivalent to describe it) and filled it up with earth—I don't know what you call it.

Q. What was the character of the country—the main land—between Buenaventura Bay and Cardova?

Mr. MURPHY: Same objection.

WITNESS: Soft ground.

Q. Soft ground? A. Yes, sir.

Q. Was there any water? A. In some places, yes; muddy ground, the whole of it—the whole distance.

Q. Can you describe how soft it was?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir. There are masses of decomposed clay, soft clay, all along, and so deep (witness describing depth) you can take a stick and put it in four meters down, and you can pull it out without any trouble

Q. You say you can take a stick four meters long and put it in without any trouble? A. Yes. You can take a stick and push it the whole distance down there in some places without trouble.

Q. And how did that earth have to be handled? A. That land?

Q. How did you have to work it? A. Well, in those places when we are digging big ditches we rake the soft clay with our hands and make molds and put them on the (1543) top of the embankments, and we did the work in that way.

Q. What is the distance from Buenaventura to Cordova? A. 12 miles.

Q. 12 miles? A. Yes, sir. 20 kilometers.

Q. How much of that distance is of that soft, wet clay?

Mr. MURPHY: Same objection.

WITNESS: About eight-ninths.

Q. Eight-ninths of it? A. Yes, sir.

Q. Did you see the work that had been done by Mr. Cisneros—

Mr. MURPHY: Same objection.

Q. Up to the time that he stopped working? A. Yes, sir.

Q. Had you been over the lines?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. More than once? A. More than once; very many times.

Q. State whether or not the work of constructing the railroad between Buenaventura and Cordova was completed?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Was it in operation?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Do you know a place called San Cipriano on that route? A. I know it.

Q. Was there any work done between Cordova and San Cipriano?

Mr. MURPHY: Same objection.

WITNESS: The line was completed in the same way as from Codova to Buenaventura.

Q. What is the distance? A. Six kilometers.

Q. Was that completed so as to be fit for operation? A. Yes, sir.

Mr. MURPHY: Same objection.

(1544) Q. Do you know a place called Dos Quebrados? A. Yes, sir.

Q. How far is Dos Quebrados from San Cipriano? A. About one kilometer and a qurter.

Q. One and a quarter kilometers? A. Yes, sir.

Q. What work had been done on that part between San Cipriano and Dos Quebrados?

Mr. MURPHY: Same objection.

WITNESS: In Mr. Cisneros' time it was all graded and equipped, the road was—the line completed entirely.

Q. Fit to operate? A. Yes, sir.

Q. Were any locomotives and construction cars ever run over the rails between Cordova to Dos Quebrados?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir; Cali Locomotive No. 1.

Q. Do you know a place called Caballete? A. I know it.

Q. How far is it from Dos Quebrados? A. Well, Caballete is in Colombia territory. I make it from 27¼ to 30, and that is the distance from Dos Qubrados to Caballete.

Q, That would be 2 7-10 kilometers? A. Yes, sir.

Q. Now, was any work done on the line of the road between Dos Quebrados and Caballete? A. Yes, sir.

Mr. MURPHY: Same objection.

Q. Was any work done by Mr. Cisneros on the road between Dos Quebrados and Caballete? A. Yes, sir; the grade was nearly completed, with exception of two cuts.

A. About what was the length of those cuts? A. About 150 feet.

Mr. MURPHY: Same objection.

Q. Each? A. Each.

A. And about what was their depth?

Mr. MURPHY: Same objection.

WITNESS: I cannot now recall their depth, but about 25, the highest one about 23, the second one—the other one.

(1545) Q. Was there any work done by Mr. Cisneros beyond Caballete? A. Yes, sir.

Mr. MURPHY: Same objection.

WITNESS: Yes; a little of no importance.

Q. Was the road between Cordova and Caballete operated by the running of trains?

Mr. MURPHY: Same objection.

Q. Was it open to traffic?

Mr. MURPHY: Same objection.

WITNESS: Repeat the question.

Q. Was this road from Cordova to Caballete put in operation as the road from Buenaventura to Cordova was? A. To Caballete? No.

Q. What river had to be crossed between Cordova and Caballette? A. The Dagua,

Q. At more than one place? A. No; only one place.
C. Was there a bridge there.

Mr. MURPHY: Same objection.

WITNESS: Yes, sir; an iron bridge.
Q. Was that bridge safe for regular traffic? A. Yes, sir; it has been safe, but actually there is some trouble on the left bank of the river.
Q. Was that the reason that the road was not used beyond Cordova? A. In what time do you mean?

Mr. MURPHY: Same objection.

Q. In 1883? A. A wood bridge—two wooden bridges.
Q. There was no iron bridge in 1883? A. No; I misunderstood.
Q. You misunderstood? A. Yes; I misunderstood.
Q. Was that wooden bridge that was there in 1883 safe for traffic? A. No, sir; washed out twice.
Q. Did you have occasion to go back to that place and work on that road—on that railroad?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.
Q. In what year?

(1546) Mr. MURPHY: Same objection.

WITNESS: I came to work there in 1878.
Q. That is when you first went there? A. Yes, sir.
Q When did you go back? When did you go to work there the second time? A. The second time?
Q. Yes, sir. A. The second time I came for a few days in 1885. I had some business with Mr. Cisneros in relation to the delivery to the Government.
Q. I am speaking of when you went there to do work on the road. When was that? A. That was 1887.
Q. What month in 1887? A. In 1887, well, about June. I don't remember very well about that. About June.
Q. About June? A. Yes, sir.
Q. And how long did you continue work there? A. Until some time in the year 1889.
Q. Until about June, 1889? A. Yes, sir.
Q. About two years? A. Yes, sir.
Q. Was any work of repairing done on the road during those two years?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. What part of the road?

Mr. MURPHY: Same objection.

WITNESS: From Buenaventura to San Cipriano.
Q. All of that? A. Yes, sir; the whole of it.
Q. To what extent was that repaired?

Mr. MURPHY: Same objection.

WITNESS: To what extent? Well, to be ready for using it.
Q. In what condition was it when the repairing was completed?

Mr. MURPHY: Same objection.

WITNESS: In a first-class condition; very good condition, the line was at that time. I never seen it before better, nor after.
Q. Now was any repairing work done between San Cipriano and Dos Quebrados?

(1547) Mr. MURPHY. Same objection.

WITNESS. Please repeat the question.
Q. Was any repairing work done between San Cipriano and Dos Quebrados? A. Yes, sir, removing some slides—the clearing and removing of some slides; slopes on the sides.
Q. Was any work done between Dos Quebrados and Caballete?

Mr. MURPHY. Same objection.

WITNESS: Yes, sir. By the account of a French company.
Q. What was the nature of the work they did?

Mr. MURPHY: Same objection.

WITNESS. Clearing only.
Q. When you left there in 1889, what was the condition of the road from Buenaventura to San Cipriano?

Mr. MURPHY: Same objection.

WITNESS: It was ready for operation.
Q. Was the bridge construction beyond Cordova sufficient?

Mr. MURPHY: Same objection.

WITNESS: Was the bridge construction?

Q. Was the bridge over the Dagua river such that the road could be operated beyond Cordova? A. No, sir.

Q. The repairing you referred to, then, did not affect the bridge?

Mr. MURPHY: Same objection.

WITNESS: Nothing to do with the bridge; simply the roadbed and the right bank of the river.

Q. Did that include the rails and cross ties?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Was there any work done beyond Caballete? A. Yes, sir.

Mr. MURPHY: Same objection.

WITNESS: As I said before, an excavation and grading (1548) of no importance and the clearing about one kilometer and a half.

Q. Did you see the road after Mr. Cherry took charge of it?

Mr. MURPHY: Same objection.

WITNESS: Twice.

Q. Did you see the direction in which he carried on the work?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Did he follow the same route, that beyond Caballete, that Mr. Cisneros had followed? A. No, sir.

Mr. MURPHY: Same objection.

WITNESS: He followed another route.

Mr. CROSS: Also the objection that the question is leading.

Q. Did you do any work on that road after 1889?

Mr. MURPHY: Same objection.

WITNESS: After that date?

Q. After the year 1889? A. I commenced to work again in 1897.

Q. What time in 1897?

Mr. MURPHY: Same objection:

WITNESS: I came on in January.

Q. You went there in January? A. Yes, sir.
Q. And when was the work actually begun?

Mr. MURPHY: Same objection.

WITNESS: On the fifth day of November, 1897—the same year.
Q. When did you leave that neighborhood?

Mr. MURPHY: Same objection.

WITNESS: What is that?
Q. When did you leave there to come to this country? A. I don't understand that.
Q. When did you go away from Colombia to come to this country? A. From Buenaventura?
(1549) Q. When? What time did you leave there? A. On the 3d of July of this year.
Q. On the 3d of July, 1899? A. Yes, sir; excuse me if I cannot speak clearer English. Go slowly.
Q. When you left on July 3d, 1899, how far had work of construction been extended? A. Nine kilometers and a quarter.

Mr. MURPHY: Same objection.

Q. From what point to what point? A. San Jose to El Salto.
Q. How far is San Jose from Cabellete?

Mr. MURPHY: Same objection.

WITNESS: Six kilometers and 680 meters.
Q. Is San Jose between Caballete and Cali or between Caballete and Buenaventura? A. Between Caballete and Cali.
Q. Do you know a place called Catanga?

Mr. MURPHY. Same objection.

WITNESS. I know it.
Q. How far is Catanga from San Jose? A. Catanga from San Jose is six kilometers and about a half; about six kilometers and a half.
Q. Six and a half? A. Yes, sir.
Q. And how far is El Salto from San Jose?

Mr. MURPHY: Same objection.

WITNESS: Nine and a quarter kilometers.
Q. Had any work been done between San Jose and Ca-

tanga between the time you left in 1889 and the time you went back in 1897?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. What work has been done?

Mr. MURPHY: Same objection.

WITNESS: Scattered grading a distance of six kilometers.

Q. Scattered grading through a distance of six kalometers? A. Yes.

(1550) Q. Did you have occasion to measure the amount of that grading?

Mr. MURPHY: Same objection.

WITNESS: I measured it with a scale before I commenced my work there.

Q. What amount of excavation and filling has been done?

Mr. MURPHY: Same objection.

WITNESS: Little more than 13,000 cubic meters.

Q. How much? A. A little more than 13,000 cubic meters.

Q. A little more than 13,000 cubic meters? A. Yes, sir; cubic meters.

Q. Was the whole distance to El Salto, the 9¼ kilometers, graded while you were in charge—

Mr. MURPHY: Same objection.

Q. Between 1897 and last July? A. Yes, sir.

Mr. MURPHY: Same objection.

Q. What was the sum—the amount—of the excavation and filling done during that time?

Mr. MURPHY: Same objection.

WITNESS: About 140,000 cubic meters.

Q. Did that amount of work suffice to establish the grade?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Is that grade now established?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Was any other work done than that grading?

Mr. MURPHY: Same objection.

WITNESS: Yes; preliminary lines; but of no use for me.

Q. Well, was any other work done on the 9¼ kilometers besides the grading?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. What? A. What I mean—the preliminary line.

(1551) Q. Well, now, what work, if any, was done while you were there between San Jose and El Salto besides the grading?

Mr. MURPHY: Same objection.

WITNESS: Besides the grading? Rails, cross-ties, and put the line ready for operation.

Mr. MURPHY: Same objection.

Q. Finished? A. Finished.

Q. And when you left on July 3, 1899, the road then from San Jose to El Salto was completed and ready for operation?

Mr. MURPHY: Same objection.

WITNESS: Completed; the heavy engines running the the whole length of the line.

Q. Do you know a place called Delfina?

Mr. MURPHY: Same objection.

WITNESS: Yes.

Q. How far is that from El Salto? A. Well, it may be the difference between 9½ and 12 kilometers.

Q. That would be 2 75–100? A. 2¾, yes.

Q. Was any work done there by you?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. What was the nature of that work? A. Half the grading.

Q. Half the grading? A. Yes.

Q. When you left there? Up to the time you left there? A. Yes, sir; at that time.

Q. Did you see this work done yourself?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Mr. Uribe, state if you know, which is the more difficult and expensive work, the construction from Buenaventura to Cordova or from Cordova to San Jose?

Mr. MURPHY: Same objection.

WITNESS: From Buenaventura to Cordova.

(1552) Q. How much more difficult and expensive is the part from Buenaventura to Cordova than from Cordova to San Jose?

Mr. MURPHY: Same objection.

WITNESS: Estimating that in money, it would cost one-third more from Buenaventura to Cordova than that work from Cordova to San Jose. Do you understand me?

Q. Yes. What is the distance from Buenaventura to Cali? I mean the distance as a railway would go. A. About 85 miles.

Mr. MURPHY: Same objection.

Q. What is the distance from Cali to Manizales? A. From Cali to Manizales?

Q. Do you want a pencil? A. Yes. (figuring).

Mr. MURPHY: Same objection.

WITNESS: About 130 miles.

Q. About 130 miles? A. Yes, sir.

Q. Where is Cali situated with reference to the Cauca Valley? A. It is near the foot of the western Cordilleras and the left hand side of the Cauca river.

Q. Of the Cauca river? A. Yes, sir.

Q. What is the character of the country between Cali and Manizales?

Mr. MURPHY: Same objection.

WITNESS: Well, part of it is a level land—dead level.

Q. How much of it?

Mr. MURPHY: Same objection.

WITNESS: 81 miles—about that.

Q. And what is the character of the rest of it?

Mr. MURPHY: Same objection.

WITNESS: It is hilly.

Q. Hilly? A. Yes.

Q. Are you acquainted with the Cauca Valley? A. Yes, sir; I have lived there many years.

Q. What is its character as a valuable country?

Mr. MURPHY: Same objection.

(1553) WITNESS: Oh well, sir; it is the richest part of our country.

Q. It is the richest part of your country? A. Yes, sir.

Q. Is it very extensive? A. Yes, sir; it is very extensive.

Q. Do you know about the area?

Mr. MURPHY: Same objection.

WITNESS: Something more than 1,000 miles—square miles.

Q. How big a place is the city of Cali?

Mr. MURPHY: Same objection.

WITNESS: The city of Cali? 25,000 souls.

Q. What are the principal seaports of Colombia?

Mr. MURPHY: Same objection.

WITNESS: What are the principal seaports of Colombia?

Q. Yes. A. Well, on account of the importations, Baranquila is the first one, on the Magdalena river, Panama.

Q. That is the first in importance? A. Yes, sir, Baranquila.

Q. What is the next in importance?

Mr. MURPHY: Same objection.

WITNESS: Cartagena.

Q. What is the next in importance?

Mr. MURPHY: Same objection.

WITNESS: Buenaventura.

Q. Do you know whether or not there is any national importance in having a railroad from Cali to the port of Buenaventura.

Mr. MURPHY: Same objection.

WITNESS: Yes. In my opinion that railway is the most importance work that we need in Colombia.

Q. Do you know whether or not that opinion is the general opinion of the people of the country, or whether it is the view of a few?

Mr. MURPHY: Same objection.

WITNESS: It is the general view of all the Cauca people.

Q. State which, if either, is the most important—a road from Cali to Buenaventura or from Manizales to Cali.

(1554) Mr. MURPHY: Same objection.

WITNESS: The line from Cali to Manizales is of secondary importance—of secondary importance.

Q. What is the reason of the importance of the road to Buenaventura? A. From Cali to Buenaventura? Because all our richness is stopping because of the want of that line—our productions are limited for the want of that railway.

Q. State whether or not transportation between Buenaventura and Cali is difficult without a railway.

Mr. MURPHY: Same objection.

WITNESS: Oh, yes; tremendous difficult.

Q. Is there the same difficuly of transportation between Cali and Manizales?

Mr. MURPHY: Same objection.

WITNESS: No, sir. We have the steamboating on the Cauca river and good mule roads from Cauca to Manizales.

Q. How big is the harbor at Buenaventura?

Mr. MURPHY: Same objection.

WITNESS: How big is the harbor?

Q. How big is the harbor? Is it a big harbor? A. Yes, it is a big one. It is able for about 500 vessels.

Q. What is the depth of water?

Mr. MURPHY: Same objection.

WITNESS: Well, I cannot say that properly, but it is sufficient deepness for ships of 25 feet draught.

Q. 25 feet draught? A. Yes, sir.

Q. Mr. Uribe, what was the gauge of the railroad from Buenaventura to Cordova?

Mr. MURPHY: Same objection.

WITNESS: It was a three-foot gauge.

Q. In 1883?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. What was the gauge of the road from Buenaventura to San Jose when you went there in November, 1897?

Mr. MURPHY: Same objection.

(1555) WITNESS: The same.

Q. Three feet? A. Yes, sir; the same guage.

Q. Is any part of the road constructed on a gunge of one meter?

Mr. MURPHY: Same objection.

WITNESS: No, sir.

Q. Have you examined the work that was done between Cordova and San Jose while Mr. Cherry and his associates had charge of it?

Mr. MURPHY: Same objection.

WITNESS: I had occasion to study it, because I was in charge of the whole line and making some reparations; I had occasion to examine it.

Mr. MURPHY: He has not fixed the date when he had charge of it.

WITNESS: Not in Mr. Cherry's time I mean.

Q. You had nothing to do with it in Mr. Cherry's time? A. No, sir; never.

Q. You are referring to some time between November, 1897, and last July? A. Yes, sir.

Q. That is the time that you made the examination? A. Yes, sir.

Mr. MURPHY: My objection, I believe, is noted.

Q. Did you see the work that Cherry did any time while Cherry had charge of it?

Mr. MURPHY: Objected to.

WITNESS: Twice.

Q. Did you go over it? A. Yes.

Mr. MURPHY: Objected to.

WITNESS: The first time, no.

Q. Did you at any time?

Mr. MURPHY: Same objection.

WITNESS: Yes.

Q. In whose company? A. In Mr. Cherry's company.

Q. How much of it? A. From Buenaventura to Sucre.

(1556) Q. Did you have an opportunity then to see the character of the work he had done? A. Yes, sir.

Mr. MURPHY: Same objection.

Q. You stated you went there to Buenaventura in January, 1897? A. Yes, sir.

Q. Just after Mr. Cherry gave up the road?

Mr. MURPHY: Same objection.

WITNESS: To receive the enterprise from his hands.

Q. In behalf of the Government? A. Yes, sir.

Q. Did you then examine the road?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Did you examine the part of it between Cordova and San Jose.

Mr. MURPHY: Same objection.

WITNESS: Yes, sir; I did.

Q. Will you state what was the character of the work between Cordova and San Jose?

Mr. MURPHY: Same objection.

WITNESS: The character of the work is poor and for many reasons inferior to that constructed by Mr. Cisneros from Buenaventura to Cordova.

Q. Well, what are the objections to it?

Mr. MURPHY: Same objection.

WITNESS: The objection is, that although it has as heavy rails as Cisneros' had, that is at the same time safer, the grade has a greater radius for the curves, and the cuts narrower.

Q. Did you have occasion to examine the grades constructed by Mr. Cherry?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. What discovery did you make from examination of that work?

Mr. MURPHY: Same objection.

WITNESS: I discovered that the grades changed con-

(1557) tinuously—that in some places it was one grade

and in a very few meters ahead it was another grade—and the same thing in curves, the radius varying. I would find five radiuses in one curve.

Q. You would sometimes find one curve constructed on five radii? A. About five radiuses in the same curve.

Q. Did that occur in more than one curve? A. Yes, sir; I have tried in some different places.

Q. How did you ascertain that?

Mr. MURPHY: Same objection.

WITNESS: I don't understand.

Q. How did you find that? A. With my instrument.

Q. By actual measurement, you mean?

Mr. MURPHY: Same objection.

WITNESS: By actual measurement.

Q. Now, you said something about the curves being sharper?

Mr. MURPHY: Same objection.

WITNESS: Yes, sharper, compared with Mr. Cisneros' curves on his line.

Q. Is there any disadvantage in that?

Mr. MURPHY: Same objection.

WITNESS: In what?

Q. Is there any disadvantage—is it better or worse for the curves to be sharp? A. Worse. When the radius is sharper the curves are worse, of course.

Q. Do you remember what locomotives there were belonging to the road at the time Mr. Cisneros gave it up?

Mr. MURPHY: Same objection.

WITNESS: Yes, I remember.

Q. What were the names of them?

Mr. MURPHY: Same objection.

WITNESS: The Cali, No. 1; the Popayan, No. 2; and the Palmyra, No. 3.

Q. When you left there in July, 1889, were those three locomotives still there?

(1558) Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. Any more?

Mr. MURPHY: Same objection.

WITNESS: No; no more.

Q. When you went there, in January, 1897, were those locomotives still there?

Mr. MURPHY: Same objection.

WITNESS: Yes, the remains of one. I don't know the word—the expression. The Cali was destroyed and the Palmyra in use and the Popayan in the switch, without using it—in a siding.

Q. Was there any other one there?

Mr. MURPHY: Same objection.

WITNESS: Yes; two other locomotives.

Q. What were they called? A. The Cauca (the big one) and the Dagua.

Q. Did you have occasion to ascertain what was the wheel base of the Cauca?

Mr. MURPHY: Same objection.

WITNESS: Well, it was about 12½ feet.

Q. Did that have any effect on the ability to run that over the road?

Mr. MURPHY: Same objection.

WITNESS: On account of the sharp curves.

Q. Could you run it or not? A. Well, without danger, no.

Mr. MURPHY: Same objection.

Q. How broad a wheel base ought to be had for a locomotive on that road?

Mr. MURPHY: Same objection.

WITNESS: It ought not to be over seven feet.

Q. Are there many or few curves in that road from Cordova to San Sose?

Mr. MURPHY: Same objection.

WITNESS: Very many curves.

(1559) Q. How much straight track is there in any one place?

Mr. MURPHY: Same objection.

WITNESS: One place? Little more than 2 kilometers is the largest in a straight line.

Q. Do you remember how many cars there were when Mr. Cisneros gave it up?

Mr. MURPHY: Same objection.

WITNESS: How many cars? In Mr. Cisneros' time, I remember 4 box cars and 1 cattle car and 3 passenger cars—1 first-class and 2 second-class passenger cars.

Q. Were *they* any flat cars?

Mr. MURPHY: Same objection.

WITNESS: Yes; about half a dozen.

Q. Were there any dump cars for construction?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir.

Q. How many? A. Half a dozen, about.

Q. Now, when Mr. Cherry gave it up in January, 1897, and you went there, how many cars were there?

Mr. MURPHY: Same objection.

WITNESS: 6 box cars, 1 cattle car more and 1 first-class passenger car more.

Q. Were the cars that were there in Mr. Cisneros' time still in existence?

Mr. MURPHY: Same objection.

WITNESS: Yes, sir; but in very bad order.

Q. When you speak of a box car, do you mean a freight car?

Mr. MURPHY: Same objection.

WITNESS: Freight car, yes.

Q. An enclosed freight car? A. Yes, sir; a closed freight car.

Q. Where were you instructed in your profession as an engineer? A. Well, I made some studies in Medellin, the capital of the Antioquia State.

(1560) Q. How long did you pursue your studies there? A. About 6 years.

Q. About 6 years? A. Yes, sir.

Q. When did you first commence to do practical work in the engineering line? A. In February, 1878.

Q. Have you been engaged in that work continuously since then? A. Yes, sir.

Q. Engaged in any other business? A. Well, with the exception of a few months.

Mr. JOHNSON: That's all.

JULIAN URIBE.

Witness:

WILLIAM F. MURRAY.

CROSS EXAMINATION.

Mr. CROSS: We don't care to ask the witness any questions.

Mr. JOHNSON: That is all, Mr Uribe. They do not want anything more from you. You can retire.

HAROLD R. MILLER (recalled).

Q. (By Mr. JOHNSON:) Mr. Miller, are you acquainted with Mr. Manuel H. Pena? A. Yes, sir.

Q. You are acquainted with Mr. Lewis M. Haupt? A. Certainly.

Q. You are acquainted with Mr. Christian F. Schramme? A. Certainly.

Q. Were you acquainted with Mr. Francisco J. Cisneros? A. Very much so, sir.

Q. Is he living or dead? A. He died in New York, July 7th, 1898.

Q. Did you have any official relations with Messrs. Pena, Schramme and Haupt in the spring and summer of 1897? A. I did.

Q. What was it? A. I was appointed secretary to the arbitration commission which met in New York during that time.

Q. Of whom was that commission composed? A. The (1561) commission was composed of Mr. Pena, Mr. Schramme and Prof. Haupt, as commissioners, and Mr. Cisneros and Mr. Stine as counsel.

Q. Was Mr. Cisneros a lawyer? A. No; Mr. Cisneros was attorney in fact for the Government.

Q. And was there any counsel for the Government? A. Mr. Cisneros employed Mr. Roderick Robertson as counsel.

Q. Mr Miller, did you have anything to do with reporting the proceedings of those three gentlemen, acting as arbitrators between the Government of Colombia and the Cauca Company under the agreement of January 4, 1897, between the Government of Colombia and that Company by its attorney? A. Yes; I reported in shorthand, took down stenographically all the meetings of the commission, with one or two small exceptions.

Q. I wish you would state, as near as you can, what days or parts of days during their sessions you did not ste-

nographically take down the whole proceedings? A. In the month of August—I believe it was the week from the 12th to the 19th, I am not certain as to the exact date—we had three or four meeting following—

Q. What do you mean by "following?" A. One day after the other—consecutive days—and on those occasions I had the assistance of a Mr. O'Connor, who reported part of the meetings on those days.

Q. And you reported the other half? A. I reported the other half.

Q. What was being done then by the arbitrators? A. They were taking testimony. I do not remember who was on the stand precisely.

Q. Now what other occasion was there that anyone assisted in the taking of testimony? A. There may have been three other occasions when this same gentleman assisted. They would have been prior to the last session of the taking of testimony.

(1562) Q. When was that? A. That must have been, I think, at the end of August, the 31st of August.

Q. Were you absent from the session of the 31st of August at any time? A. I was absent for about—for a few minutes.

Q. For a few minutes? A. Yes, sir.

Q. And prior to that you think there may have been two sessions at which Mr. O'Connor assisted? A. Yes; but I was present at the time.

Q. So that, with the exception of parts of three days in August, which you think may have been in the week from the 12th to the 19th, you were present during the entire sittings of these arbitrators? A. I was.

Q. Were you present during the discussion and consideration of the claims by the arbitrators? A. I was present during the whole of that time.

Q. Was any other person present besides yourself and Messrs. Haupt, Schramme and Pena? A. Never, except at the last session.

Q. At the last session what other person was present? A. Mr. Stine.

Q. Who was he? A. Mr. Stine was counsel for the Company.

Q. Mr. Marcus Stine? A. Marcus Stine.

Q. Did any person assist in taking down stenographically the proceedings before these gentlemen than Mr. David J. O'Connor? A. Nobody else at all.

Q Did he assist any except the occasions which you have mentioned? A. None whatever.

Q. Who attended to having these stenographic reports written out? A. I did.

Q. How did you do it? A. I used to bring my notes back to the Clarendon Hotel, where secratarial office was, and I would dictate them to two or three typewriters that we had employed for that purpose, and parts I would transcribe myself.

(1563) Q. Did you compare and revise that work? A. Yes. The minutes were always sent out the following day to each member of the commission, and before they were sent out I would go through them and see if there were any errors as to amounts or names, and so forth.

Q. Were they returned to you? A. The first part of the testimony; the different members would return these minutes with corrections, and in some instances fresh copies were made and sent out.

Q. Well, how was it subsequently? A. Subsequently it was not so, because members were satisfied with the correctness of the minutes.

Q. Well, were they sent to them? A. They were always sent them, but no corrections were made.

Q. They were not returned with any corrections? A. No, sir; no corrections.

Q. Was the same course pursued in regard to the other proceedings? A. Yes, sir; the minutes were sent, but they were not returned for corrections. I may say that when the minutes were printed the proofs were submitted to both sides and some corrections were made in the printer's proofs.

Q. Who superintended the printing of the record of the proceeding of those arbitrators which is incorporated in the three printed books filed in this suit and described as "Exhibits 19, 20 and 21?"

Mr. CROSS: We object, because there is nothing before the court to show that the witness has any knowledge of what is in those books.

Mr. JOHNSON: Perhaps that objection is well taken. Will you strike out that question and I will substitute another one for it.

Q. Did you have anything to do with the superintending the printing of the reports of the proceedings of those arbitrators? A. Yes; the matter of the printing was left with me; I corrected the proofs after submitting them to the members of the commission.

(1564) Q. Can you state whether or not they were correctly printed? A. Barring a few typographical errors,

and paragraphing in printing them, I understood them to be perfectly correct.

Q. Do you recall having made an affidavit which was attached to the three volumes of printed minutes of that arbitration for the purpose of being filed with the bill in this case? A. I do.

Q. To whom did you deliver those? A. The affidavit?

Q. The affidavit and the volumes to which it was attached. A. They were delivered to each member of the commission.

Q. I am referring to the particular copies to which the original affidavit which you swore to was attached. A. Oh, that was delivered to Messrs. Carlisle and Johnson.

It was stipulated and agreed by counsel for the parties that the three printed volumes as to which the witness has above testified are the same volumes filed in this cause with the bill of complaint, and known as Exhibits 19, 20 and 21.

Q. Mr. Miller, on page 1,025 of the third volume of those printed minutes is a paper entitled, "Report of President. Buenaventura, Colombia, December 1st, 1893," which extends to and concludes upon page 1,048 (handing book to witness). I will ask you to state whether or not you saw that document before the arbitrators during their session? A. I did. I saw the original document.

Q. By whom was it produced? A. It was produced by Mr. Stine.

Q. Was it exhibited to and quoted from by him before the arbitrators? A. Several times.

Q. Did you have it in your possession? A. Yes, sir. At least it was in Mr. Cisneros' possession.

Q. Did you ever have it in your manual possession? A. Certainly.

Q. Did you see the signature to it? A. Yes, sir; I did.

Q. Whose signature was it? A. Mr. James L. Cherry. (1565) Q. Do you know who copied it for the printer? A. I did.

Q. Do you know who superintended its printing in these volumes? A. I did.

Q. After the taking of testimony had been completed and the arbitrators proceeded to the consideration of the claims presented before them, was there any meeting of those arbitrators for that purpose at which you were not present? A. None that I am aware of.

Q. In the reports of those proceedings, in each session—in the report of each session—there is given the date

and hour of assembling, the hour of adjournment for recess and the hour of adjournment to a subsequent date? A. Are you asking me that question?

Q. I am stating that as being on the minutes. A. Yes, sir.

Q. Are those statements correct as printed in those minutes? A. Yes, sir, they are.

Q. At the thirty-fourth session held on Tuesday, the 19th of October, 1897, there appears at page 887 in Volume 3, and subsequent pages, that the question of allowing an item of $48,668.18, the claim of interest was taken up and and the consideration thereof started upon, and on page 890, it appears that, at the request of Mr. Haupt, consideration of that question was postponed, to be taken up at a subsequent time, to be fixed at the suggestion of the chair. I would ask you to state whether or not the consideration and discussion was ever subsequently taken up by any members of the Board of Arbitrators in your presence? A. It was not.

Q. At the same session, at page 899 of Volume 3, it appears that the question of allowing interest amounting to $32,333.40 was taken up and the discussion thereof entered upon, and on page 900, at the suggestion of Mr. Pena, the consideration of that item was postponed, to be taken up at a later date, in which proposition of postponement all three arbitrators agreed. Was the consideration and discussion of that item ever taken up by any of the (1566) arbitrators at any meeting in your presence? A. No. That matter was never taken up. There were two items—your previous question embraced one item only. Wasn't it?

Q Yes. Was there at any time in your presence any discussion by any of the arbitrators or any mention by any or either of them of the allowance of the sum of $10,000 to Mr. Stine as counsel fees, in your presence? A. No. The matter was never mentioned in my presence.

Q. When did you first hear of that item? A. When I saw the award.

Q. Mr. Miller, do you remember the 35th and 36th sessions of the arbitrators? A. Distinctly.

Q I wish you would please state, as near as you can, what took place at the 35th session. A. Is the 35th session the last one?

Q. No; the 36th session is the last one.

Mr. Cross: The 35th session was held on the 22d day of October.

Witness: That was held at the Army building—the 35th session. What do you want?

Q. State what took place. A. The 35th session was held at the Army building, I believe; I believe at 10 o'clock in the morning. I went down to the meeting, provided with a letter from Mr. Pena, in which he stated that he resigned. The letter was incorporated in the minutes. Also a letter from Mr. Cisneros, which was also incorporated in the minutes, stating to the Commission——

Q. Don't state the contents of the letter. A. All right. A letter from Mr. Cisneros, which was also incorporated in the minutes.

Q. What did you do with those letters? A. I presented them to the chairman and they were carried into the meeting.

Q. The chairman, Mr. Haupt? A. Mr. Haupt.

Q. Who was present at that time? A. At that time there was present Mr. Schramme, Mr. Haupt and myself.

(1567) Q. What others were present? A. Nobody else.

Q. Will you state whether or not the room in the Army building was a room provided by the commission? A. Are you referring to the Cauca Commission?

Q. Yes. A. No; this was an office which belonged to the Nicaragua Canal Commission, provided by the State Department.

Q. Do you know how the arbitrators happened to be in their rooms? A. It was agreed that we should meet there for the convenience of the chairman.

Q. What had the chairman's convenience to do with the meeting of the arbitrators in the room of the Nicaragua Canal Commission?

Mr. MURPHY: I object on the ground that it is irrelevant, immaterial and incompetent, and further on the ground that the mental workings of the commissioners are not within the knowledge of this witness, so that he can testify to them.

WITNESS: Only this: It was suggested that the meetings might be held there, as it was the most convenient for all parties concerned.

Q. What made it convenient?

Mr. MURPHY: I object.

WITNESS: Because Mr. Haupt's rooms were in the building.

Q. Did Mr. Haupt have anything to do, or have any connection with the Nicaragua Canal Commission?

Mr. MURPHY: Objected to on the ground that it is incompetent, irrelevant and immaterial.

WITNESS: He had just been appointed a member of the Nicaragua Canal Commission.

Q. Go on. A. As to why it was used? Why the room was used? That was the reason.

Q. Now, go on and describe what took place. A. After presenting those letters, Mr. Haupt proceeded to dictate an address to the State Department, stating more or less—

(1568) Q. One minute. To whom did he proceed to dictate that address? A. It was addressed—

Q. No. To whom did he dictate it? A. Oh, to me.

Q. To yourself? What did you do with reference to his dictation? A. I took it down.

Q. How? A. In shorthand.

Q. Go on. A. Well, he proceeded with that. It was addressed to Mr. Sherman—Mr. John Sherman, Secretary of State—and he stated what had happened.

Q. Don't state what it was. He proceeded with the dictation. Did he finish it? A. No; while this was in progress Mr. Stine arrived, and I was asked to leave the meeting, and I don't know what happened.

Q. You were asked to leave the meeting. Did the dictation suspend when Mr. Stine arrived? A. It did. I may say that prior to dictating that there was some slight amendments in the chairman's preliminary opinion at that same meeting.

Mr. MURPHY: Please note an objection to all this.

WITNESS: His preliminary opinion. A certain correction made, which I took down in shorthand also.

Q. Does that appear in those minutes? A. It does.

Mr. MURPHY: I object. The minutes speak for themselves.

Q. When Mr. Stine arrived you were requested, you say, to leave the room? A. I was.

Q. Did you leave? A. I left and went into an adjoining office.

Q. Who made that request that you leave the room? A. Mr. Haupt.

Q. After you left the room, did you go into another room—did you again enter that room? A. Yes; I waited for about twenty minutes or half an hour, and Mr. Haupt called me in.

Q. When you went out, whom did you leave in the room? A. Messrs. Stine, Haupt and Schramme.

(1569) Q. When you came back who was in the room? A. The same three gentlemen.

Q. Then what took place?

Mr. MURPHY: This is objected to as immaterial, incompetent and irrelevant.

WITNESS: I was instructed to destroy that part of the minutes which referred to the address to the State Department.

Q. Who gave that instruction? A. First, Mr. Stine told me, and it was confirmed by Mr. Haupt.

Q. Was the destruction effected? A. Yes, sir.

Q. By whom? A. I tore them up.

Q. Where? A. In that room, excepting such parts as referred to the preliminary report.

Q. What did you do with the torn up pieces? A. I don't know. I think they were disposed of in the waste paper basket.

Q. You are not able to reproduce them? A. Absolutely not.

Q. Now will you state from recollection, as near as you can, the substance of what he dictated to you?

Mr. MURPHY: I object to it as immaterial, incompetent, irrelevant, and that there is nothing to show that it is part of the minutes. The testimony of the witness has been that he took a dictation to the Secretary of State, which was destroyed.

WITNESS: The letter was in this sense: It was addressed to Mr. Sherman, and stated that in view of the fact of the arbitration commission having held deliberations at which all members of the commission were present, and that having about arrived at a decision, one of the members—the member appointed in behalf of the Colombian Government, had resigned, and they wished to have the instructions of the Government in regard to it.

Q. That was the substance of all of it? A. That was as far as I got.

(1570) Q. Now, Mr. Miller, will you proceed to tell what further occurred, if anything? A. It was then convened—the meeting was convened till 2 o'oclock, at 30 Broad street.

Q. In what manner? A. Adjournment of meeting.

Q. Will you please describe how that adjournment took place? A. Mr. Haupt told me that the meeting would adjourn till 2 o'clock, and would I be present at 30 Broad street, when the meeting would be continued. To the best of my recollection that was what was said.

Q. And what was 30 Broad street? A. 30 Broad street was the office of Mr. Stine, where all the testimony was taken.

Q. Did you proceed to that place? A. I did; I was there at 2 o'clock.

Q. Did you proceed to Mr. Stine's office. A. I did, sir.

Q. Who did you see there? A. When I got there first there was nobody there—there was nobody there when I got there first, but subsequently Mr. Stine, Mr. Haupt and Mr. Schramme came in.

Q. And did anything take place? A. Nothing took place, excepting after waiting for about 15 minutes, I was handed a copy of the award and also a typewritten copy of the proceedings of the 36th session, which I was told to incorporate in the minutes.

Q. At which session was that; at Broad street or at the Army building? A. At Broad street.

Q. Who handed you that typewritten copy of the award and copy of the proceedings? A. Mr. Haupt.

Q. In what form was it? A. In typewriting—a typewritten sheet.

Q. Do you know by whom it was written? A. I do not know, but I believe it was written by—

Mr MURPHY. I object.

Q. Never mind what you believe. A. I don't know; I wasn't there.

Q. Did the arbitrators formally assemble on that occa-
(1571) sion and have the meeting called to order? A. Yes, sir.

Mr. MURPHY: I object.

Q. Who did that. A. Mr. Haupt. I may say that the meeting was called to order and Mr. Haupt telephoned Mr. Pena, telling him that the meeting was in session and that they were waiting for him and they would wait a reasonable time for him, and Mr. Pena telephoned back and said—

Q. Did you hear what Mr. Pena said? A. No; only Mr. Haupt was at the telephone and spoke out loud.

Q. You heard Mr. Haupt conversing over the telephone and talking, as you understood, with Mr. Pena? A. Yes, sir; that's it.

Q. Did anything occur after that? A. Yes, sir. The meeting was then called to order and I was handed these type-written minutes.

Q. Who was present at that time? A. Mr. Stine, Mr. Haupt, Mr. Schramme and myself.

Q. Was anybody else present? A. Nobody else was present, but there was Mr. Guggenheimer, who came in to make the affidavit.

Q. Which affidavit? A. I believe to certify to the signatures on the award.

Q. Oh yes. Now can you recall anything further that took place at either of those sessions than what you have stated? A. I don't recollect anything further. Mr. Stine handed me a copy of the award and told me to give it to Mr. Cisneros, and that was the end of it. The meeting was then adjourned, *sine die*.

Q. At the 35th session, when Mr. Stine arrived, did he have any conversation with either Mr. Schramme or Mr. Haupt or both of them? A. When I was present?

Q. When he came in did he speak to them? A. Oh, yes.

Q. Did he have any conversation with them? A. Yes.

Q. Could you hear it? A. No.

(1572) Q. Why not? A. Mr. Schramme, as far as I recollect, had a conversation with Mr. Stine; but I didn't hear it.

Q. You did not hear it? A. No.

Q. You were near enough to hear it? A. No; I was not.

Q. Do you recall whether Mr. Schramme made any remark on that occasion, prior to your leaving the room? A. Yes, sir; Mr. Schramme said that he wished to put forward his side of the case.

Mr. MURPHY: I object to that as incompetent, irrelevant and immaterial, and also as leading.

Q. Go ahead and finish your answer. A. And it was then that Mr. Haupt asked me to leave the room for a little while.

Q. Did that sheet containing the statement of the minutes which was given you get printed in these three volumes? A. It did.

Q. Will you look at this copy of the minutes, beginning on page 913, the 36th session, and see if you can find it?

Mr. JOHNSON: Have you any objection, Judge Cross, to my handing him this book?

Mr. CROSS: None in the world.

Mr. JOHNSON: I have looked at this book and there are no marks on it of any kind.

Q. Look at that and tell us on what page appears that memorandum of minutes which you were given to insert as the minutes of the meeting. A. It begins at page 916.

Q. (By Judge CROSS:) At what word? A. At the words "Thirty-fifth session."

Q. (By Mr. JOHNSON:) Where does it end? A. It ends at page 925.

Q. (By Judge CROSS:) It goes on to page 925? A. Yes.

Q. (By Judge CROSS:) 916 to 925, did you say? A. No; I beg your pardon. That is wrong. It ends at page 923—it ends with the words "and thereupon the meeting adjourned." There should have been a space there in this printed report, but there is not.

(1573) Mr. JOHNSON: It ends at page 923 right there at the top? A. There should have been a space there. There is a mistake in the printing—he should have left a space at the top. It begins on page 916 and ends at page 923.

Q. Mr. Miller, after you had completed, or after the printing of these minutes had been completed, did you exhibit copies of them to any of the members of the Board of Arbitrators? A. Copies were given to each member for signature.

Q. For what? A. To each member for signature.

Q. By whom? A. To Mr. Schramme and Mr. Pena and Mr. Haupt.

Q. By whom were they given? A. By myself.

Q. You took them to them? A. I took them personally to each them.

Q. Did those gentlemen sign any of those minutes in your presence? A. Well, I won't say they were all signed in my presence, because there were a good many signatures. Mr. Pena, for instance, took his copy home.

Q. I am speaking now of the printed volumes, when they were printed and ready for delivery. A. There were three copies printed and ready for delivery to them. Those three volumes were given personally to Mr. Haupt, Mr. Schramme and Mr. Pena by myself personally.

Q. Were any of these volumes signed by any of these gentlemen? A. They were—three copies were signed.

Q. Were all of the minutes signed by all of these gentlemen? A. With the exception of the last meeting.

Q. Did either of these gentlemen make any statement to you about the minutes when you presented them—Mr. Haupt, Mr. Schramme or Mr. Peny? A. Are you referring to when they signed all the minutes prior to the last session.

Q. No, I am referring to this completed printed volume which you say was taken to them with no signature. You have stated that the printed volume was finished, completed, everything except the signature, and they were taken to them for signature? A. Yes.

(1574) Q. Now what I want to know is whether Mr.

Schramme, Mr. Haupt or Mr. Pena said anything to you about these minutes at the time you presented them to them for their signatures? A. I may say these minutes were signed prior to the last meeting.

Q. Which minutes? A. The printed volume.

Q. You mean all that were signed? A. In the course of the proceedings the typewritten copies were suspended and printed copies were made right away.

Q. With reference to the last meeting? A. With reference to the last meeting, I took a copy to Professor Haupt. I met him at the army building and he was in a hurry to go home and he signed it, which copy I retained as secretary.

Q. Did he make any remarks on the subject? A. At the time, no, but he wrote me a letter afterwards.

Q. What was done with that letter? A. The original letter?

Q. Yes. A. The letter was printed in my affidavit.

Q. In those proceedings? A. In those proceedings. I don't know what became of the original.

Q. Did you see Mr. Schramme? A. No, I did not.

Mr. JOHNSON: Gentlemen, we will now offer in evidence Exhibits 19, 20 and 21, filed with the bill of complaint in this cause, for the sole purpose of showing that these matters and things therein set forth took place, and with that we close the testimony of Mr. Miller, and perhaps it is proper to state that it is now nearly 2 o'clock.

Mr. CROSS: In the offer of our friends of the printed minutes marked Exhibits 19, 20 and 21 as to what took place at the meeting. That is offered by you. Of course, we can not make any objection, but we want to reserve the right to make some trifling or rather immaterial corrections as to detail, which we have referred to in our answer on page 37. Of course, we will have that privilege. You offer that. Of course, we do not make any objection to it as a correct transcription. It is correct with those few (1575) trifling details. To the offer made by the counsel for the complainant, counsel for defendants do not object, reserving the right to make certain minor objections, additions and amendations, the tenor and purport of which appear in the proceedings and in the answer at pages 37, 38, *et seq*

(Recess 1:45 to 2:30.)

AFTERNOON SESSION.

CROSS-EXAMINATION.

Q. (By Mr. CROSS:) Mr. Miller, you were secretary of

the Commission that was constituted for the purpose stated, and you acted as you have stated in taking the minutes, with the assistance of the gentleman you have mentioned. Now there are one or two things in regard to Exhibits 19, 20 and 21, which I would like to ask you a question about. Subsequent to page 792—that would be in Exhibit 21, there are inserted in the records certain cablegrams from the President of the Republic of Colombia—4 pages in this record. Those cablegrams from President Caro were between him and Mr. Cisneros. They were struck out, were they not, by unanimous consent, and agreed not to form part of the record? A. Yes, sir. A resolution was passed that Mr. Schramme's testimony and those cablegrams were not to be part of the record.

Q. That was assented to by the action of the entire Commission? A. It was; yes, sir.

Q. Now, briefs of counsel were ordered to be inserted after page 828 of the official record—properly page 829—but they were entered in this volume as part of the record. Mr. Stine's argument was ordered to be printed as part of the records and was printed. It follows immediately in this printed copy—page 828. It is not in your record, but it is printed here.

Mr. JOHNSON: You mean you printed it?

Mr. CROSS: This printed book contains the argument of Mr. Stine. You have not got it with yours?

(1576) Mr. JOHNSON: Do you mean the copy of the record you have there with Mr. Stine's brief, inserted between pages 828 and 829, was signed by Mr. Pena?

Mr. CROSS: Some parts of it.

Q. That argument was made by Mr. Stine and printed under your supervision? A. I don't know what record you are referring to. You say that was incorporated in the minutes?

Q. That is incorporated in our copy of the minutes—from there on (indicating place in printed book)? A. Yes; part—in one of the meetings.

Mr. CARLISLE: Where do you find that?

Q. And also the arguments of Mr. Robertson?

Mr. CARLISLE: In the minutes where is there anything about it.

Mr. CROSS: I cannot give it to you now, but I will furnish it to you later.

Q. There was an argument made and printed. You see this, don't you, which contains the arguments of Mr. Robertson and Mr. Stine. A. No; only the argument of Mr. Stine.

Q. And that contains certain documents which were not printed by you? A. Printed in this form?

Q. Yes? A. Yes.

Q. And we have filed them as Exhibits 1 and 2 for the defendants? A. Yes, sir.

Q. These contain certain documents which we shall have before the court. Look at page 799, please, in Exhibit 21, at the top of the page. It is printed there "Company?" A. It should be "Government."

Q. That should be "Government," shouldn't it? A. Let me read the paragraph. Oh, yes. "The Government" it should be.

Q. It should be "the Government"? A. Yes, sir. It is an error in making up.

Q. That is a typographical error? A. Yes, sir.

(1577) Q. Now pages 911 and 912, "Mr. Stine," (the quotation there is the second paragraph from the last, about) it says, "Mr. Stine (counsel for the Company) then instructed the Secretary to tear up the shorthand notes of the meeting." Now isn't that a mistake; wasn't it, Mr. Haupt who instructed you? A. It was part of the minutes.

Q. Wasn't it Mr. Haupt who did not finish dictating the letter which he had begun, and who instructed you to tear it up? A. It was part of the Minutes It wasn't in the form of a letter.

Q. Well, that letter or what he was dictating was all that was torn up? A. That was all.

Q. No minutes or any other record was torn up at any time excepting that letter, which you have described, which was incomplete? A. That is correct.

Q. That is correct, is it? A. That is correct.

Q. There is another statement there: "The Chairman stated that such meeting was null and void." That is on page 911. Mr. Haupt did not declare the meeting null and void, did he? A. Yes, sir; he did. He declared that this meeting was null and void and that we would adjourn till 2 o'clock.

Q. That is your recollection? A. Yes, sir.

Q. Now, kindly look at page 1057, where there was a letter from Mr. Haupt. You asked Mr. Haupt to sign that copy of the Minutes which you handed him as he was getting out of the elevator? A. You refer to page 1056.

Q. 1056 and 1057. Isn't it the fact that you handed him the copy of the Minutes and he signed then and there, and after he had taken them away didn't he write you a letter about it? A. Precisely.

Q. Now, is that letter there? A. The letter is incorporated in the affidavit.

Q. You said he signed one of these documents without reading it. That was your rendering of the Minutes? A. Yes, sir.

(1578) In the exhibit which has been filed by the counsel for the complainant (Exhibit 21), is there the memorandum of appointment of Mr. Cisneros? Kindly look at that, Mr. Johnson, at page 946—whether the printed copy of Exhibit 21 contains the appointment of Mr. Cisneros? A. Here it is at page 946.

Q. 946; which would be Volume 3. Exhibit 21 contains the appointment of Mr. Cisneros as representative of the complainant? A. It does.

Q. As the representative of the Republic of Colombia, and it was dated "Bogota, 17th February, 1897." A. It was.

Q. And has this expression in it: "I hereby have the honor of apprising you that Senor Don Francisco J. Cisneros, who will hand you the present communication, has been appointed by the Government of the Republic as its representative and attorney before the special commission of which you are the worthy chairman, and that he has been invested with the powers necessary for the discharge of his duties." A. It does contain those words.

Q. It does contain those words? A. Yes.

Q. Turn to page 777 of volume 2—that would be in Exhibit 20—turn to pages 777 and 778. A. Yes.

Q. At the bottom of page 777, which exhibits the power of attorney which the Cauca Company granted to Mr. Cherry, and then there was a reference to the contract between Mr. Cherry and the Colombian Construction and Improvement Company, and then the witness was asked, on page 778, this question: "Q. Did you call his attention to the fact of the existence of a contract between Mr. Cherry and the Colombian Construction and Improvement Company?" And the answer is, "A. Yes, it was in the power of attorney. Q. Did you tell him the nature of the contract? A. I told him what the Company owed Mr. Cherry for the concession."

Q. Kindly state whether or not you remember that (1579) that power of attorney was filed with the papers in the case—filed by Mr. Schramme and given to you? A. I don't recollect for a moment.

Q. Won't you kindly look. You have the rest of the papers. A. I have no papers at all.

Q. What did you do with them, give them to Messrs. Carlisle and Johnson? A. They are all in their hands at present.

Q. Will you turn over the papers and see if you have them.

Mr. JOHNSON: All that we know anything about we have got of the papers.

Q. All you got of the papers you turn over to Messrs. Carlisle and Johnson? A. If it was put in as an exhibit by Mr. Schramme it would bear my initials.

Q. Didn't you give Mr. Schramme a receipt for it? A. Yes; that is so, precisely.

Q. Well, that paper is the one which we would like the gentleman to produce.

Mr. JOHNSON: If you will describe it, if you can, if we have we will produce it.

Mr. CROSS: It is a certified copy of the power of attorney from the Cauca Company to Mr. Cherry.

Mr. JOHNSON: Will you try any fix the date of it and we will try and find it.

Mr. CROSS: Mr. Schramme thinks it was in 1895.

Mr. JOHNSON: We have got a power of attorney that was sent from New York to Bogota. We have no objection to your seeing it and determining if it is the one.

Mr. CROSS: That is all right. At your convenience, will you let us see it?

Q. You have stated that the commission met at the 35th session—wasn't it at the Army building that the Nicaragua Canal Commission had its offices? A. Yes, sir.

Q. And then the commission adjourned to 30 Broad street to Mr. Stine's offices? A. Yes, sir.

(1580) Now isn't it a fact that almost all of the meetings were held at 30 Broad street? A. Yes, sir; it is a fact, yes, sir.

Q. Wasn't that place of meeting selected by the commission? A. At the commencement it was selected as the most convenient place. Mr. Stine offered quarters to the commission and the commission accepted them.

Q. You said in your testimony that Mr. Schramme gave you the power of Attorney from the Cauca Company to Mr. Cherry and you gave Mr. Schramme a receipt for it? A. Yes, sir.

Q. Now look at this paper and say, to the best of your recollection, if that is not the power of attorney from the Cauca Company to Mr. Cherry? It is difficult for me to say that is the same document.

Q. You remember there was a document handed you? A. Yes, but I am under the impression that I returned that document to Mr. Schramme and he gave me the receipt back again.

Q. That may be a question. Mr. Schramme don't think so. A. I think so, but I am not sure.

Mr. CROSS: This is the power of attorney from the Cauca Company to James L. Cherry.

Mr. JOHNSON: We are willing to admit that that is the power of attorney from the Cauca Company to Mr. James L. Cherry, which Mr Schramme gave to Mr. Miller and which is dated October 23, 1895.

Mr. CROSS: Counsel for the complainant states that this paper, Defendant's Exhibit No. 1, A. P., was received by them from the Government of the Republic of Colombia and produced by them at the request of counsel for defendants.

Q. You stated that at the second meeting on the 22d of October, 1897, that is where you adjourned to 30 Broad street and met there at 2 o'clock and waited thirty minutes or so, Mr. Stine came in. Wasn't Mr. Lewis Mar- (1581) shall, a member of Guggenheimer, Untermayer & Marshall, there at that time? A. I don't remember Mr. Marshall.

Q. Well, wasn't there another gentleman there besides Mr. Stine? A. Not to my recollection.

Mr. CROSS: That is all we wish to ask Mr. Miller.

RE-DIRECT EXAMINATION.

Q. (By Mr. JOHNSON:) Mr. Miller, you stated it was agreed that the cablegrams from President Caro, to which your attention was called, should not be considered by the commission, but they are in fact printed, and also that the deposition of Mr. Schramme should not be considered. Is that printed? A. It is printed.

Q. It was not eliminated from the printed copy. A. No.

Q. Now, do you know anything about who printed that brief of Mr. Stine's that was shown to you? A. No; I do not.

Q. Did you have anything to do with the printing of it, or anything in it? A. No. Absolutely nothing.

Q. Were you directed by anybody connected with the commission to put it in as part of the minutes? A. No.

Q. Now, did you receive into your custody all the papers and exhibits that were presented in behalf of the Cauca Company before that commission? A. I did.

Q. All of them? Did you ever get the books that M. Blum produced? A. No; I did not. They were not produced.

Q. I am speaking of the exhibits that were produced

before the commission. A. I never had the books in my possession.

Q. Were there any other books produced by M. Stine which did not come into your possession than those books of account? A. Excepting the books, I think I had them all.

Q. How much of the exhibits that they produced did (1582) you return to them? A. I returned to them all the pay rolls they produced.

Q. Can you think of any others? A. I believe there were a few documents returned of which they allowed us to take copies.

Q. Of which the originals were returned to them? A. Yes. But I could not specify which they were.

Q. And the books of account with figures in them, and which were discussed in the case never were in your possession? A. Never.

Q. Do you know what became of them? A. The last I saw of them they were in Mr. Schramme's office.

Mr. JOHNSON: That is all.

Mr. CROSS: Speaking of the books of the Cauca Company—wasn't an expert selected by the Commission to examine these books—wasn't there an expert selected? A. There was.

Q. What was his name? A. Edgar Barney.

Q. And he had possession of the books? A. He did.

Q. And made a report? A. Yes, sir.

Q. Wasn't he selected by the Commission and not by the Cauca Company? A. He was selected by Mr. Haupt, President of the Commission, and presented to the Commission and the Commission accepted him.

Q. And his report on those accounts and books was filed with the proceedings of the Commission? A. It was.

Q. Were not the books at all times open for the examination of the Commission, if they cared for them? A. They were, either at Mr. Stine's office or at Mr. Schramme's office.

Q. At all times? A. They were.

Q. And subject to any other examination than the expert selected by the Commission? A. They were. They were open for examination at either Mr. Stine's office or Mr. Schramme's office.

(1583) Q. And they were examined by the expert as you said? A. He took them away with him.

Q. He could not make the examination otherwise? A. That's it.

Q. By Mr. JOHNSON: Were those books ever subjected

to the inspection of Mr. Cisneros by anybody? A. No.

Q. Do you remember any objection made in regard to that? A. Mr. Cisneros wished to take the books with him for examination, and it was not allowed, and it was on account of that that the Commission selected an expert to examine the books.

Q. They refused to let Mr. Cisneros examine the books? A. I have no recollection of their absolutely refusing to let him have them.

Q. Did you ever make any attempt to get them. A. No; I did not

HAROLD R. MILLER.

Witness:

WILLIAM F. MURRAY.

Mr. JOHNSON: That is all.

Mr. CROSS: That is all.

Mr. CROSS: If counsel wish these books, I wish to say that they are at their service. If you wish them, you can have them.

MANUEL H. PENA (recalled.)

Q. (By Mr. JOHNSON:) You are one of the gentlemen who were appointed arbitrators under the agreement of January 4, 1897, between the Republic of Colombia and the Cauca Company, are you not? A. I am.

Q. Were there any sessions of those arbitrators at which you were present and at which Mr. Harold R. Miller was not present? A. Well, there were some sessions at which Mr. Miller was not present, I believe.

Q. Were there any sessions after the closing of testimony at which you were present and Mr. Miller was not (1584) present? A. Yes. Let me have my recollection. I believe that he had his vacation for one or two sessions, but I do not recollect exactly how many there were.

Q. I am speaking of after the testimony was closed and you had commenced the discussion of the case. A. Before, you say?

Q. After that? A. No.

Q. Who reported those discussions? A. The discussions were reported by Mr. Miller.

Q. Now, my question is, was he present at all of those sessions at which you were present? A. Yes; when the discussions took place he was present.

Q. Do you remember at the 34th session, on the 19th of October, 1897, the question of allowing an item of $48,668.18 was brought up? Do you remember that item com-

ing up and being postponed at the request of Mr. Haupt? A. Yes, I remember that.

Q. You remember that circumstance? A. Yes, I remember that circumstance.

Q. Do you remember the circumstance at the same session, of an item for $32,333.40, being the interest claimed by the company, having been postponed at your request? A. Yes; I remember that.

Q. Was the consideration of either of those items at any time ever taken up at any meeting of the Commission at which you were present? A. Not at any meeting at which I was present after that postponement.

Q. Was the question of the allowance of $10,0000 to Mr. Marcus Stine ever discussed in your presence? A. Never.

Q. Was it at any time, from the commencement of the sessions of the arbitrators to the end, ever mentioned to you by anybody? A. It was never mentioned.

Q. You resigned the office of arbitrator in this case, I believe, as appears in the records? A. I did, sir.

Q. I will ask you to state whether or not you did that (1585) by the direction or request or advice of any person whomsoever, and if so, what person?

Mr. MURPHY: Objected to as immaterial, irrelevant, incompetent and not within the issues.

WITNESS: Well, many times I talked with Mr. Cisneros; that I would resign sometime or another, because I did not like to go on, with views of the Commission on allowances that I considered were not in the convention, but I neither received advice nor did I want it, and when I did resign it was of my own impulse. Mr. Cisneros and myself talked of my resigning.

Q. When was it that Mr. Cisneros spoke to you on the subject of your resigning?

Mr. MURPHY: Objected to as incompetent, irrelevant and immaterial.

WITNESS: In the month of July, I believe it was, Mr. Cisneros told me one day that he was going to withdraw, and asked me, also, if I had the same intention. I told him that I would not resign at that time. Some days afterwards, before the last meeting which took place, Mr. Cisneros asked me what was my intention at that time, and I told him that I was decided to resign.

Q. Did you speak to General Julio Rengifo, the Charge d'Affaires of the Republic of Columbia in Washington, on the subject?

Mr. MURPHY: I object to that as incompetent, irrelevant and immaterial.

WITNESS: After the 34th session of the Commission I went to Washington, D. C., and called on Mr. Rengifo, and told him that I had fully decided to resign, because I did not concur with the views of the other members of the commission. He told me that it was—

Mr. MURPHY: I want to object to his saying what General Rengifo told him.

Q. Go on. A. I told him that I had fully decided to resign. He told me that it was a serious matter, and that (1586) I ought to consult with Messrs. Carlisle and Johnson before taking that step I replied to him that my decision was taken, and whether or not Messrs. Carlisle and Johnson would approve of that step, I should go on with it. At the request of Mr. Rengifo, we got an appointment with those gentlemen (Messrs. Carlisle and Johnson), and, being in their house, I fully explained to them that I was decided to resign; so that whatever may be their advice, I would take that step. That is all.

Q. Did any officer of the Government at Bogota suggest your resigning to you?

Mr. MURPHY: I object to that on the same grounds.

WITNESS: Well, Mr. Cisneros told me sometime that he wished I would resign, but I always answered that I could take that step, if I considered it convenient.

Q. Did you inform the Government of the fact that you had resigned?

Mr. MURPHY: I object to that on the same grounds, that it is incompetent, irrelevant and immaterial.

WITNESS: I sent a cablegram.

Q. Did you send a letter? A. I did send a letter, too.

Q. Had you been informed in July that General Rengifo had consulted counsel on that subject?

Mr. MURPHY: I object to that as incompetent, immaterial and irrelevant.

WITNESS: We knew. Mr. Cisneros and myself and Mr. Rengifo had taken advice from Messrs. Carlisle and Johnson for that step, but I do not remember exactly which was the opinion of these gentlemen. I only remember that General Rengifo objected to the withdrawal.

Q General Rengifo objected to whose withdrawal? A. Mr. Cisneros and mine.

Mr. JOHNSON: I think that is all.

CROSS EXAMINATION.

Q. (By Mr. CROSS.) You were appointed as the repre-
(1587) sentative of the Colombian government on this Arbitration Commission under the terms of the Convention of January 4th, 1897, were you not? A. I was; yes, sir.

Q. And your appointment appears as Exhibit 13 filed with the original bill of complaint on page 57 of the complainant's bill of complaint. Kindly look at that—this comes from your counsel, or from the counsel for the Government of Colombia? A. Yes, sir; that's it.

Q. Now, Mr. Cisneros also was appointed as the attorney and representative of the government? A. He was, sir.

Q. He was. And he acted before the commission as such attorney and representative from the time of its first session until the time of your withdrawal, didn't he? A. Yes, sir. He was appointed and he acted as that all that time.

Q. You began to sit as a commission on the 3rd day of April, 1897. I think that was the date? A. Yes; that is right.

Q. And the commission sat at various dates from that time until the 22d day of October? A. The commission began its work on the 3d day of April and ended when the last session of the full commission was held—I believe it was on the 20th day of October.

Q. Wait a moment. I will tell you in a moment. I think it was on the 19th day of October? A. Yes; it was the 19th day of October—that was the full session.

Q. Then the proceedings on the 19th day of October, the 34th session, was adjourned until Friday at 11 A. M. at the Army building. Then at the 35th session, held on Friday, October 22d, 1897, it is recited that Professor Haupt and Mr. Schramme were present, and the secretary handed a letter of resignation by you in, as follows: "I beg to enclose to you translation of a letter I have this day addressed to H. E. the Minister of Hacienda at Bagota, containing my resignation as a member of this Arbitration Commission, which resignation, of course, takes effect from this date. I shall esteem it a favor if you will kindly place the same before my honorable colleagues at your next meet-
(1588) ing. Yours truly, Manuel H. Pena." A. Yes, sir, that was it.

Q. That was handed to the commission by Mr. Cisneros? A. No, I handed it to Mr. ——

Q. Cisneros? A. I think it was to Mr. Miller.

Q. Did you had it to Mr. Miller or to Mr. Cisneros, and he handed it to Mr. Miller? A. To Mr. Miller, I believe it was. I handed it to Mr. Miller.

Q. Then Mr. Cisneros also sent a letter to the commission on October 22d, saying that he "had been informed by you that you had resigned, and that he desired to state that by such resignation on the part of Mr. Pena the autonomy of the commission was destroyed, and that under such circumstances no further act on your part can have any force or effect as an official act on behalf of such commission or as an official act of a commissioner in said matter." Look over that and kindly see if you ever saw it before? (Handing volume 3 to witness.) A. Yes, I have seen that before, but what I want to know is which part of the question you want me to answer, because I do not remember it from the beginning.

(Stenographer read over question.)

WITNESS: I heard of the letter and have seen it printed, but I do not know which was the time he sent it.

Q. You have stated that Mr. Cisneros spoke to you several times about your withdrawal, and you said you would do so at any time that was convenient. Now isn't it a fact that he advised your withdrawal, and that you should withdraw at this date? A. He really advised me to do so, but I did not give any answer to him. I only told him that I should do it when I should like.

Q. But what I wish to ask you is this: That you withdraw at that time with the advice and consent of Mr. Cisneros? A. Well, he always wished that I should withdraw.

Q. He did not object to your withdrawal, did he? A. I do not really understand that he advised, but he really (1589) wished that I should do it. I did not consent on account of his wish I only heard what he wished, but I had it in my mind to follow his wish.

Q. You were going to do it anyhow? A. What?

Q. You were going to resign? You had made up your mind to resign? A. I don't understand the question.

Q. You had made up your mind to resign, had you not? A. Yes, I had made up my mind to resign, yes.

Q. And your ostensible purpose for doing so was because you did not concur with the other members of the commission? A. That was really the purpose of it—that was the real purpose of it.

Q. Now, didn't you disagree with them practically from the start? A. Well, at the first we were taking the testimony, but when the commission was through with

those meetings I hoped that when the whole discussion came I could prevail, if not on Mr. Schramme, at least on the other member of the commission, that the whole and only allowance to be made was for the construction of the work.

Q. That was your view, and you had held that view all along, hadn't you? A. Yes. I had had that view all along, and when I was fully convinced that it was not the view of the third member I made up my mind to resign.

Q. Now, in July you were cognizant, were you not—that is, you knew of the sending by Mr. Cisneros of a despatch or telegram to the Minister of Hacienda, at Bogota, which is found on page 17 of the cross-bill of the Cauca Company and the Colombian Construction and Improvement Company in this cause? A. Yes, sir; I know that telegram

Q. That was correct, wasn't it? A. That was correct

Q. On the 1st of July, Mr. Cisneros sent this cablegram (reading):

"NEW YORK, July 1st, 1897.

MINISTRO HACIENDA, BOGOTA:

Commission has decided against opinion of Pena, that Convention fourth January authorizes other expenses (1590) abroad besides those of local construction. Schramme sustains that this was agreed so with Government. Renowned Counsel advise Pena to resign and I to retire the Government, should commission insist on considering all the losses of the Company. Please send precise instructions, and in case of instructing our withdrawal it will be necessary that Minister at Washington should not accept substitute. This would give rise to the formation of a new Convention.

(Signed.) CISNEROS."

Now, that was sent on the first of July by Mr. Cisneros to the Minister of the Interior at Bogota—that was Senor Esguerra, was't it?—and you were cognizant of the sending of that cablegram? A. Yes; I was cognizant of it; yes.

Q. Now, on the fifth of July, there was an answer to that received, which also appears on the 17th page of defendants' cross bill, as follows (reading):

Bogota, 5th July, 1897.

If Commission condemns Government to pay losses of the Company or other things over and above construc-

tion expenses, Government will not accept decision inasmuch as it would be openly violating the perfectly clear Convention of 4th January. Please inform Cisneros in order that he may notify Commission.

(Signed.) ESGUERRA."

You saw that cablegram when it came? A. I saw it when it came.

Q. By the way, let us know who received it? A. Mr. Cisneros.

Q. It came direct to Mr. Cisneros? A. Direct to Mr. Cisneros.

Q. State whether or not you had any other communication with the Minister of Interior at Bogota? A. Yes. By that time I wrote to the Minister of Hacienda a private letter saying that it was very likely I should resign, be-
(1591) cause I saw that the Commission was not within the terms of the Convention, and I should take private advice from the Government if it should be convenient that I should withdraw or not.

Q. When did you get that letter; A. I sent that letter.

Q. You sent that letter? A. I sent that letter.

Q. Did you get any answer to it? A. Not any.

Mr. Gross: Will counsel kindly produce that letter?

Mr. Johnson: It was a private letter, was't it?

Witness: It was a private letter that I sent to the minister.

Q. To Minister Esguerra? A. Minister Esguerra.

Q. He was the minister of Interior at that time? A. We called him the Minister of Hacienda. That is the Finance Minister, and I sent him my letter as I had my appointment from him. It was a private letter.

Q. Have you a copy of that letter? A. No; I have not. It was quite a private letter.

Q. Was it not a letter from you as a commissioner to the executive of the Government? A. No; it was not as a commissioner. It was only Manuel H. Pena to Esguerra.

Q. You would distinguish Manuel H. Pena as commissioner and as a private individual? A. Yes, sir.

Q. And you wrote to the Minister of Hacienda as a private individual and not as Minister of Hacienda? A. Yes, sir,

Q. We would like to have a copy of that letter. Will you produce it? A. I will, if I have got it. I don't think I have got it.

Q. You got no further answer to that cablegram from Esguerra either by letter or cablegram?

Mr. JOHNSON: He distinctly told you that was not a communication to him. The cable you are reading there was a cable to the Colombian Minister—to the Colombian Consul. It is nothing to him and you should not put in his mouth words that he did not express.

Q. You had no answer at all, you got no answer at all (1592) and had no knowledge of the action of the minister excepting such as you derived from this dispatch by cable by Esguerra to Cisneros? A. That's all.

Q. That is all you had? A. Yes, sir; that's all.

Q. And you had requested precise instruction from the minister in case of his directing your withdrawal?

Mr. JOHNSON: He did not say anything of the kind. He said he wrote a private letter to Mr. Esguerra, and you are reading a cable which Mr. Cisneros sent to the Minister at Bogota.

Q. Didn't you have knowledge that Mr. Cisneros sent this cablegram the 1st of July? A. Yes, sir.

Q. And you had that knowledge at the time it was sent? A. Yes, sir.

Q. And you got no further reply at all?

Mr. JOHNSON: No further reply to what?

WITNESS: No reply excepting that. We had a reply to that telegram sent by Cisneros but no other.

Q. You had a reply to the cablegram sent by Cisneros? A. It was not to me. I got none.

Q. You got none? A. No.

Q. Then, then there was no action by the government except this? A. Nothing but that. They said nothing to me.

Q. You had cabled?

Mr. JOHNSON: The witness has not said that he cabled. He said that Cisnerss had cabled.

Q. Cisneros cabled with your knowledge and approbation?

Mr. JOHNSON: He did not say with his approbation and you have no right to put words into his mouth.

Q. Did you dissent from Cisneros' cablegram? A. No; I did not, I believe. I did not consent or dissent. I said nothing.

Q. You knew he was sending this cablegram? A. Yes, sir.

(1593) Q. And you knew he was sending it after a conference with you? A. It was sent what?

Q. After conference between you and him? A. Yes, we had talked about it.

Q. You had talked about it? A. Yes.

Q. And then the request of Mr. Cisneros was for "precise instructions," and in case of instructing our withdrawal it will be necessary that minister at Washington should not accept substitution. This would give rise to the formation of a new convention." You knew those words were in the cablegram? A. Yes. I knew they were in there.

Q. And you said nothing. The government said nothing? A. Yes, sir.

Q. You went to Washington, October 21, 1897? A. Yes, sir.

Q. You saw Rengifo? A. Yes, sir.

Q. You saw him first? You saw him before you went to see Carlisle and Johnson. What did you say to Rengifo? A. I said to Rengifo that I wished to communicate to him the fact that I had decided to resign.

Q. And, then, you also said that Mr. Cisneros concurred? A. Well, I don't remember if I told him so; but it is very likely that I did.

Q. It is very likely that you told him that? A. It is very likely that I told him that he assented to it.

Q. Of course, it was probable that you said so. A. Yes.

Q. Then you saw Messrs. Carlisle and Johnson with General Rengifo. Now, you got to Washington on the 21st, didn't you? A. Yes.

Q. And you saw Senor Rengifo and had this conversation with him, and went with him to Messrs. Carlisle and Johnson? A. Yes, sir.

Q. And then they advised Rengifo that it would not be proper that you should resign. A. No; they did not advise me anything at all.

Q. Was Cisneros with you in Washington? A. No; I (1594) was alone. I was accompanied by my wife; but that is private.

Q. We will keep the ladies out of this as much as we can. Now, in the answer of the Colombian Government there is this statement, on page 12 of the answer of the Colombian Government to the cross-bill: "Our advice is that the Colombian Government should not withdraw its members of the commission or its representative; but that both should attend the meetings, and that their objections should be timely, properly, appropriately and carefully made to every subject considered by the commission beyond its authority," etc. Did Messrs. Carlisle and Johnson

bring that advice to your attention at the time you saw them?

Mr. JOHNSON: I object to that. Let the witness look at the book. You will note my objection. I object to the question on the ground that it confuses statements in the pleadings as to an incident occurring with Mr. Cisneros in July with the interview of the witness in October.

Mr. CROSS: Now answer my question.

Mr. JOHNSON: . Let the witness look at the book.

Mr. CROSS: I have a right to test the witnesses' recollection of the matter.

WITNESS: Read the question.

(Stenographer read the question.)

WITNESS: What advice do you mean?

Q. The advice I read. A. I had no advice of Messrs. Carlisle and Johnson.

Q. Was the advice they gave you verbal, or was it in writing?

Mr. CARLISLE: I object to the question just put following a statement by the witness that no advice was given him by Messrs. Carlisle and Johnson, counsel for defendants now asking in his question if the witness received advice—asking witness whether the advice given was verbal or written, the witness having shown throughout (1595) his testimony that he does not perfectly comprehend English and cannot fully express himself in that language

Q Now I will put another question, Mr. Stenographer. You said you went to Washington on the 21st of October and saw Mr. Rengifo and went with him to Messrs. Carlisle and Johnson. Now did not Messrs. Carlisle and Johnson give you some advice at the time, or what did they say? A. I say that I went with Mr. Rengifo to Messrs. Carlisle and Johnson, because Mr. Rengifo wanted to know what was their opinion, but I said to him that I wanted no opinion at all, that I was decided to resign, and that whatever may be their advice, or the talk that we should have I was decided to tell them that I would resign anyway.

Q. Now you have not answered my question. I asked you what advice if any did Messrs. Carlisle and Johnson give you. Whether you were going to follow that advice or not is another thing. Kindly say whether they

did give you any advice or not. A. I do not recollect that they gave me any advice.

Q. What did Messrs. Carlisle and Johnson say to you—anything? A. Oh, yes. They were talking about that step, but they advised me nothing that I recollect.

Q. They did not give you any advice? A. Not any advice.

Q. They did not say whether or not, according to your recollecfion, whether you should resign or not? A. No. They did not say anything about that that I can say.

Q. Have you no recollection about it? A. No.

Q. What time of the day was that on the 21st that you saw them with General Rengifo? A. It was between 7 and 11 o'clock, I believe.

Q. When did you leave Washington and come on to New York? Didn't you leave at midnight that day? A. That was a fact.

Q. Then you came on to New York from Washington on the morning of the 22d? A. That was so.

(1596) Q. And then you sent to Mr. Miller your resignation? A. That is so.

Q. Now, at the time you sent that resignation to Mr. Miller, the resignation addressed to the Minister of Hacienda was in the shape of a letter. State whether you cabled on that day that you were going to resign, or had resigned? A. The letter that was printed over there that I sent by cable, and also a letter.

Q. Did you cable to the minister? A. Yes.

Q. On the same date? A. Yes, sir.

Q. Will you kindly produce a copy of the cable? A. It was the same as the letter, more or less. It was the same. I don't remember exactly.

Q. Did you get any answer to that cable? A Not any direct to me.

Q. Did you get any indirectly? A. There was afterwards a cablegram from the Government to Mr. Cisneros saying that the Government approved the steps, but I did not see it, whether it was the steps of Mr. Cisneros or mine.

Q. But that was in the cable to Mr. Cisneros after you had resigned? A. It was to Mr. Cisneros.

Q. That was that the Government approved of your resignation? A. Not exactly that—my resignation—those were not the words.

Q. What were the words? A. The Goverment's words were, more or less, that "the Government approved your steps that you have taken"?

Q. The steps were your resignation and his with-

drawal? A. I could not say that it was exactly that, because it was addressed to Mr. Cisneros and Mr. Cisneros had it. Mr. Cisneros had withdrawn.

Q. But Mr. Cisneros showed it to you? A. Yes, sir.

Q. How soon was it afterward? A. That was some 4 or 5 days afterwards.

Q. The letter was dated the 22d, and the cablegram, you think, was of the same day? A. Yes, the same day.

(1597) Q. And you in a few days afterwards got that information that the steps were approved? A. Yes, sir.

Q. Now at the time you had sent this resignation, on the 22d by letter and cablegram, the Commission had been in session 203 days, hadn't it? A. I have not a record.

Q. It was from the 23d of April to the 22d of October—203 days, and there was only remaining of the time in which the commission could sit 7 days? A. I believe that is more or less the count.

Q. You did not indicate to the Commission that you had received a reply to your communication to the Government? A. I did not. I was not a member of the Commission at that time.

Q. Whether you were a member of the Commission or not, you did not communicate to the Commission the fact that you had received a reply to your resignation? A. I was not a member of the Commission.

Q. During the time the Commission was in session, did not Mr. Haupt call you up by telephone and ask you to come around, and you said you would not? A. I did not, because I did not consider I was a member of the Commission.

Q. But you had notice of that session of the Commission? A. Not before.

Q. That notice was by telephone? A. Yes, sir.

Q. And you could have gone around and attended the session of the Commission if you wanted to do so? A. Yes, sir.

Q. And you did not go? A. I did not go.

Q. Mr. Pena, I would like very much if you would produce a copy of the cablegram received by Mr. Cisneros subsequent to your cablegram to the Government stating that you had resigned, in which they stated that they approved of the steps taken? A. I have not a copy of it. We are not in the habit of keeping copies of private letters like that.

Q. You did not keep a copy, did you? A. I did not (1598) keep a copy, neither have I copy of the letter. What cablegram do you mean—the one I sent to the Government or the one that Mr. Cisneros received?

Q. I ask you to produce a copy if you can. A. I am unable to produce a copy of the letter sent because I have not a copy of that letter at all.

Q. Your letter to the minister was of the same tenor as your letter to the commission, wasn't it? A. To the commission?

Q. Yes; your letter of resignation. A. The letter of resignation was a different thing from the letter that I had sent to the Minister of Hacienda—that was a private letter that I had sent to the Minister of Hacienda.

Q. Now, you cannot furnish us with a copy of the cablegram which you sent to the Government on the 22d day of October? A. No, but it is very likely at the cable office.

Q. Couldn't you get it for us from the office in New York? You sent it by the Western Union? A. It is very likely.

Q. Couldn't you furnish us with a copy of that cablegram? A. I don't know whether I can or not.

Q. You see, if we go to the Western Union Company and ask them for a copy of it they would say to us, "You didn't send it," and they will not give us a copy, but if you go and ask them they will give you a copy. Now, won't you do that for us? A. Yes, indeed I will do it.

Q. And won't you ask for a copy also of the cablegram sent by Mr. Cisneros?

Mr. CARLISLE: On your own argument which you have just advanced, he could not get it, they would not give it to him.

WITNESS: As the cablegram was not addressed to me I don't think I want to do that.

Q. Your cablegram was addressed to the Minister of the Interior, wasn't it? A. The Minister of Hacienda.

Q. His name was Senor Esguerra? A. No. It was (1599) in the name of the Minister of Hacienda, his official name.

Mr. CROSS: Now, we give notice to the counsel for the Government to produce that cablegram from Mr. Pena to the Minister of Hacienda of the date of October 22, 1897, or thereabouts, and also the answer to Mr. Cisneros in which it is stated, "the Government approves the steps." That's all.

RE-DIRECT EXAMINATION.

Q. By Mr. JOHNSON: When you went with General Rengifo, do you remember where you went? A. Where?

Q. Do you remember where you went? A. Yes.

Q. Where did you go? A. To one of your houses. I

don't remember whether it was to the house of Mr. Carlisle or Mr. Johnson, but not to the office.

Q. You went to the residence of one of us and not to the office? A. I don't remember. I cannot recollect at all.

Q. Do you remember whether it was in the day time or in the night? A. I believe it was between 7 and 8 o'clock in the evening.

Q. When did you write your private letter, do you remember? A. It was in the month of June or July.

Q. Was it before or after Mr. Cisneros sent his cable? A. Which cable?

Q. His cable to the minister to which Mr. Cross referred. That cable of July 1st. A. Maybe at the same time. I don't recollect.

Q. At all events, you never had any reply to it? A. Not any reply.

Q. Did Mr. Cisneros tell you after he came from Washington in July that General Rengifo was opposed to your resigning?

Mr. MURPHY: That is objected to as incompetent, irrelevant and immaterial.

WITNESS: Well, yes he told me so.

Q. When you saw General Rengifo in October, was he still opposed to your resigning?

(1600) Mr. MURPHY: Same objection.

WITNESS: All the same. He was always opposed to my resigning.

Q. And did you know that his counsel had disapproved of such a course?

Mr. MURPHY: Objected to.

WITNESS: Which counsel?

Q. General Rengifo's counsel, Messrs. Carlisle and Johnson. A. Approved or disapproved?

Q. Did you know that General Rengifo's counsel, Carlisle and Johnson, disapproved of your resigning?

Mr. MURPHY: Objected to.

WITNESS: Disapproved.

Q. Did you know that they agreed with General Rengifo and disagreed with you—disapproved of your resigning? A. Well, it was a general talk that we had—that I was talking of going to resign. I do not remember if they approved or not, because on my first entry, I told them that I would not receive any advice.

Q. You would not receive any advice? A. That I would not receive any advice, but that I was in the full conviction of doing it.

Q. Whether they advised it or not? A. Whether they advised or not.

Q. As a matter of fact did you ask their advice on the subject?

Mr. MURPHY: Objected to as incompetent, immaterial and irrelevant.

WITNESS: I did not ask any advice on the subject.

Q. And did they give you any advice?

Mr. MURPHY: Objected to for the same reason.

WITNESS: I don't remember any.

Q. And do you remember during the session of the Commission that Mr. Cisneros and Mr. Robertson claimed to have consulted counsel in New York on the subject of your resigning? A. Yes, I know that.

(1601) Mr. CROSS: Kindly confine it to your own knowledge.

WITNESS: Yes, I know that they had some consultation with some lawyers in New York.

Q. In New York? A. In New York.

Q. And that was before Mr. Cisneros came to Washington and saw General Rengifo and counsel there?

Mr. MURPHY: Objected to as incompetent, irrelevant and immaterial.

WITNESS: I don't remember the time.

Q. It was discussed in the proceedings before the commission, was it not? A. It was.

Q. And Mr. Robertson spoke of having gotten such an opinion? A. He spoke of that.

Q. And that was the time at which you learned of it, whenever that was, as it appears in the proceedings? A. It was.

Mr. CROSS: Carlisle and Johnson were not counsel for the Republic of Colombia in the proceedings before the Commission in any way. They were not interested in those proceedings in any way, were they?

WITNESS: Read the question.

(Stenographer read the question.)

WITNESS: Not to my knowledge.

Q. You would have known if they had been. You

never communicated with them? A. Never communicated with them.

Q. Well, now tell us why did you go and see General Rengifo on the 21st of October if you had made up your mind to resign anyhow, and not to be guided by any advice from him or Messrs Carlisle and Johnson. Why did you go to see him? A. Simply as a matter of courtesy, because he was our minister, and I thought he ought to take notice of all my steps here.

Q. Purely from courtesy you called on him? It was not to get his advice at all? A. No; not at all.

Mr. CROSS: So I understand. That is all, Mr. Pena.

(1602) Mr. JOHNSON: That is all we can do to-day. I expect Mr. Calderon here to-morrow morning.

MANUEL H. PENA.

Witness:

WILLIAM F. MURRAY.

Adjourned till 11 o'clock, Friday, August 25.

BOSTON, Friday, August 25, 1899.

CLIMACO CALDERON, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, did depose and say as follows:

Q. (By Mr. JOHNSON:) Mr. Calderon, you are a citizen of the Republic of Colombia? A. Yes, sir.

Q. What official position do you now occupy? A. The position of Envoy Extraordinary and Minister Plenipotentiary of Colombia in Washington.

Q. Were you educated to the law? A. Yes, sir; I was so educated.

Q. In Colombia? A. Yes, sir; at the University of Bogota.

Q. Were you ever admitted to the bar of that country? A. Yes, sir.

Q. In what year? A. 1873.

Q. Did you ever hold a judicial office? A. I have held some.

Q. What? A. I was first circuit judge for two years.

Q. And was that a court of the General Government or a court of one of the States? A. That was a court of one of the States.

Q. And were you judge of any other court? A. I was afterwards judge of the Court of Appeals of the State of Boyaca four years.

Q. Did you state how long you were a judge of the Circuit Court? A. Two pears.

Q. Two years. And what other court were you a judge of? A. I was judge of the Supreme Court of the Nation.

(1603) Q. And how long were you a judge of that court? A. I was elected for a term of four years, but I only held the position for a year and a half, when I resigned.

Q. Did you then hold any other office connected with the law? A. I was attorney-general of the nation.

Q. Attorney-general of the nation? A. Yes; I was appointed by the House of Representatives.

Q. For how long were you attorney-general? A. For two years; for the constitutional term.

Q. As attorney-general of the nation, was it your duty to advise the executive officers of the Government as to the laws of the nation? A. Yes, sir; always. All the departments used to ask for legal opinions and advice from the attorney-general.

Q. Was the jurisdiction of these courts of which you were a member such as to involve the laws generally of the whole nation? A. The Supreme Court, yes. The circuit courts were the courts of the first instance in the matters of the nation, but appeal was taken to the Supreme Court of the nation. Those circuit courts belonged to the nation and to the States at the same time.

Q. Now, in addition to holding judicial office and being attorney-general of the nation, did you engage in private practice? A. Yes, sir; I was in private practice for some time after I had been a judge of the Circuit Court. I was in practice two years, and I was in practice after I left the Court of Appeals for a year.

Q. Before you went into the Supreme Court? A. Before I went into the Supreme Court; yes, sir.

Q Now, after you ceased to be attorney-general, did you occupy any office for your government in this country? A. Yes; I was appointed consul-general in New York; I was consul-general for 14 years in New York.

Q. In your office of Consul General of Colombia in New York did you have occasion to keep advised of the laws of your country, and to give opinions and advice to (1604) citizens of Colombia in that capacity? A. Oh, yes; very often. Some people used to come to me for advice. That has been my profession. I always studied the law. Besides, I have been called into court to testify as a witness, in the courts of New York, about four or five times; to testify in regard to the Colombian laws.

Q. In the courts of this country, in the city of New

York, you have been called as a witness to testify as a Colombian lawyer? A. Yes, sir; in the city of New York I have been a witness as a Colombian lawyer.

Q. Are you familiar with the Constitution of the Republic of Colombia? A. Yes, sir.

Q. I will ask you what authority or what branch of the Government has authority under the Constitution to make contracts binding upon the nation which involved the payment of money by the Government?

Mr. MURPHY: That is objected to as irrelevant, incompetent and immaterial and not within the issues, and further objection that it is not the best evidence of which the cause is capable.

WITNESS: The President is authorized under the Constitution to make contracts, whether it is what is called administrative contracts and contracts for public works or public improvements, or any contracts involving the payment of money out of the treasury. If the President has been previously authorized by Congress, and the President acts within the terms of the law wherein that authority has been given to him, the contract does not require the approval of Congress, but if the President goes out of the terms of the law and in the contract are stipulated conditions which are not according to the law, then the approval of Congress is necessary, and Congress is expressly authorized by the Constitution to approve or reject in that case those contracts.

Q. How is it in the case where there is no law previous authorizing the President to make the contract—where (1605) there is no provision authorizing the President to make the contract? A. It has to be submitted to Congress.

Mr. MURPHY: Objected to for the same reasons as before.

(Stenographer read the question.)

Mr. MURPHY: Objected to.

Q. For what purpose? A. For the purpose of approval or rejection by Congress. It is clearly established in the Constitution.

Q. Now, when a contract, not previously authorized by Congress, is entered into by the executive and submitted to Congress and approved by that body, what is the status of that contract as compared with other laws of Congress?

Mr. MURPHY: Same objection.

WITNESS: Well, that contract is a law just the same as any other law. It is a contract which has been made by the Executive and has been approved by the Congress, and it becomes a law of the land.

Q. Is that law of Congress, under the Constitution of the nation, capable of modification or amendment by any authority without the sanction of Congress?

Mr. MURPHY: Same objections.

WITNESS: No. It must have both parties to come to an agreement, and one of the parties is the Government—the Nation—which is represented in that case by the Executive and Congress—the second party. The agreement of both parties to it is necessary.

Q. But the action of Congress is necessary to modify any contract approved by law of Congress? A. Necessary? Of course, yes.

Q. You have seen the law known as "Law 60, 16 November, 1894," which is set forth as Exhibit No. 10 of Complainant's Bill of Complaint in this case, have you? A. Yes, sir; I have seen it in Spanish.

Q. Does that law in any way disturb any possession or take away any right of any party under the contract to which it refers?

(1606) Mr. MURPHY: Same objections.

WITNESS: I don't think so. My opinion is that it does not.

Q. That law, you observe, refers in one of its parts to a modification attempted by Mr. Caro of the previous law, No. 20, embodying the contract of the 27th day of August, 1890?

Mr. MURPHY: Same objection.

Q. And disapproves of that act of the President? A. It does.

Mr. MURPHY: Same Objection.

WITNESS: Yes; this says that the Congress did not give its approval to the modification of the original contract.

Q. Did not give its approval? A. No, of course; was rejected. As much as said that the Congress did not approve of the contract. That does not affect the original contract at all. It only applies to the attempted change of the original contract.

Q. Under the Constitution of the Nation had the President, without the sanction of Congress, any power to mod-

ify the contract of August 27, 1890, which had been approved by the Congress?

Mr. MURPHY: Same objection.

WITNESS: Well, I studied very carefully this question when the contract was made, and I always have had the opinion that the President had no authorization at all to enter into this contract without submitting it for approval to the Congress.

Q. Without reference to this particular contract—in any case where the Congress has by law approved a contract authorizing the expenditure of money, can the President or any other officer of the Government modify that contract in any respect without the sanction of Congress?

Mr. MURPHY: Same objection.

WITNESS: No, he can not; in Colombia you can see almost every year examples of that, after Congress con-
(1607) venes, after Congress comes into session, original contracts are modified because the parties have not been able to comply with their conditions, and they want some modifications, and the executive has submitted them to Congress for their approval—otherwise they are not worth anything at all.

Q. Mr. Calderon, is there any court in the Republic of Colombia, and was there any court between the years 1890 and 1897, in which the nation could be sued by any party claiming a right to recover by reason of any contract with the Government?

Mr. MURPHY: Same objections.

WITNESS: Yes, sir; the Supreme Court of the Nation.

Q Has that jurisdiction of such suits?

Mr. MURPHY: Same objections.

WITNESS: Oh, yes.

Q. Do you know of such suits being entertained before that court?

Mr. MURPHY: Same objections.

WITNESS: All the time they are entertained.

Q. Were such suits entertained by that court while you were a member of it?

Mr. MURPHY: Same objections.

WITNESS: Yes; and I remember to have given decisions in matters of that kind.

Q. You have yourself rendered decisions of that kind?

Mr. MURPHY: Same objections.

WITNESS: Yes, sir; several times.

Q. In such matters? A. Yes; several times.

Q. In what manner are such judgments against the Government recovered?

Mr. MURPHY: Same objections.

Q. When a judgment is recovered against the Government of the nation, in what manner are such judgments collected? A. A necessary appropriation has to be made by Congress in the estimate.

Mr. MURPHY: Same objections.

(1608) Q. The judgment, then, is reported to the Congress.

M. MURPHY: Same objections.

WITNESS: Yes; it is reported to the Congress. When the Government sends the estimates to the House of Representatives, a copy of the judgment of the Supreme Court is sent to the committee on appropriations in order to include it in their appropriations, in their estimates.

Q. Mr. Calderon, is there any power under the Constitution of Columbia by which the Government can compel persons who contract to render service—to render that service, if they violate the contract?

Mr. MURPHY: Same objections.

WITNESS. No; there is no power at all—no authority at all.

Q. involuntary servitude is not permitted?

Mr. MURPHY: Same objections.

WITNESS: No.

Q. Whether a party contracts or not? A. No.

Q. If one person makes a contract to serve another and then breaks that contract, what remedy is there?

Mr. MURPHY: Same objection.

WITNESS. A civil action; that is the only thing.

Q. A civil action? A. A civil action for breach of contract. But that is all. That is the only remedy.

Q. Is there any power under the Constitution of Colombia on the part of the Government to prevent the pub-

lication in the public press of articles offensive or disagreeable to individuals?

Mr. MURPHY: Same objections.

WITNESS: No, not to individuals. There are some restrictions allowed to the Government but not to individuals.

Mr. JOHNSON: That is all.

CROSS-EXAMINATION.

Q. (By Mr. CROSS:) Mr. Calderon, will you kindly turn to page 8 of the bill of complaint (Arabic numerals (1609) at the top), and look at "Complainant's Exhibit No. 4, Law 16, 1890, Cherry Contract. Republic of Colombia, 'Diario Official,'" etc., etc. Now it appears that that contract was made between the Secretary of Public Works and Jame L. Cherry—kindly look at page 21—on the 27th day of August, 1890, and then it was approved, apparently by the decree of Congress—— A. Yes, sir.

Q. October 18, 1890—on page 22. A. Yes, sir.

Q Under the Colombian law that would be a valid contract, would it not? A. Yes, with the approval of Congress.

Q. A valid contract if made by the executive and approved by Congress? A. Yes, sir.

Q. Now, do you have any recollection of Law 144 of November 26th, 1888, whereby powers are given to the Government—see page 9 of that record—"upon Law 144 of November 26th, 1888, whereby powers are given to the Government relating to the construction of the Cauca Railway and the Government making use of such powers and especially such to which Section 2 of Article 4 of said law relates," and then it recites, "We, the undersigned," etc. Have you any recollection of that law 144? A. No, I don't recollect that law especially; no.

Q. Wasn't it a law providing for the construction of the railroad? A. Yes, sir; but I don't remember any details. I remember it because there was such agitation in regard to the construction of that railway, because the people were very much interested in it.

Q. There was a law providing for the construction of the railway in the Cauca Valley? A. Yes sir.

Q. You are not familiar with its terms? A. No; I am not.

Q. This recites that it is executed under the provisions of that law? A. Yes, sir; that law.

Q. You say that was a valid contract? A. Yes, sir.

Q. Now we come the forfeiture or alleged forfeiture on

(1610) page 40—the text of the law is given on page 40. A. Yes, sir.

Q. 16 November, 1894. "The Government will proceed to decree lapsed the contract of 27 of August, 1890," and then it forfeits. It does not approve of Contract 98 of 1892 between the Minister of Public Works and Mr. Victor Mallarino, general representative of the Cauca Railroad Company, which deals with the extension of time for the construction of the said railroad. Now, with that law before you, kindly look at the 37th clause of the Cherry contract, beginning on page 19 of the complainant's bill—the 37th clause—I will call your attention to that clause, and especially to the part on page 20, which I will read as follows: "In case, for any reason, the Government declare the concession to be forfeited, the concessionary or whoever may represent him shall have the right to submit the matter to the decision of two experts, one to be appointed by the Government and the other by the Concessionary, and such experts shall appoint an umpire for the case of disagreement. The decision of the arbitrators or of the umpire by them appointed shall be final and unappealable" Now, in your opinion as a lawyer of Colombia, didn't that give a special remedy to the party in the event of forfeiture, and wasn't that special remedy valid? A. Yes; it was, in what is stipulated in that.

Q. Stipulated in the contract approved by Congress? A. Yes.

Q. And that stipulation as to arbitration was valid? A. Yes, sir; very often it is inserted in contracts of this kind.

Q. It is very often inserted in contracts? Yes. Now, then, kindly turn to Complainant's Exhibit No. 11 (English translation) on page 44 of same paper—"The Congress of Celombia. Decrees," etc.—the first article there—"Article 1. The executive is hereby fully empowered to equitably compromise with the grantee of the railroad from Bu-(1611) enaventura to Manizales or his lawful representative, the questions or differences that may arise in consequence of the declaration of lapse of the franchise referred to in the Resolution No. 9 of October 16th, 1895, or by reason of the stipulations of the contract of August 27th, 1890, approved by Law 16 of the same year." Now, that law was passed by the Congress regularly and approved by the Executive as it appears on page 46? A. Yes, sir.

Q. Now, that law was a valid law, was it not? A. Yes, sir.

Q. There is no objection to that—it is a sound valid law? A. Yes, sir—a sound valid law.

Q. Now, independent of any question of forfeiture, if there was a claim made by a foreigner against the Colombian Government, would not the Colombian Government have the right to create a tribunal or method for the adjustment of that claim? Would not that be within the power of the Government? A. No. Well, if the Government had not been authorized by the Congress. In that case, the Government must be authorized by Congress.

Q. I say, could not Congress authorize the settlement of a claim in a certain way? A. Oh, well, if the law has been authorized by Congress it is all right.

Q. Now when the Congress authorizes the Executive to do it, then that is a valid act of the Colombian Government, is it not? A. Yes, sir.

Q. For purposes of adjustment? A. Yes, sir.

Q. And when that adjustment takes place, it binds the Government? A. Yes, sir.

Q. Legally? A. Yes, sir.

Q. Now you have mentioned in your evidence before you said that the President can make contracts with the authorization of the Congress, and say that that is provided for by the Constitution. Could you kindly give us from memory a reference to the section giving that power? A. To the President? It is Section 16, I think, of Article 120. (1612) Q. Section 16 of Article 120? A. Yes; I think so—Article 120, section 16.

Q. I simply wish it for reference, so that we can look at it. You are familiar, you say, with the Constitution of the Republic of Colombia? A. Yes, sir.

Q. Now, I cite this portion of the Constitution, 35th Article (I am reading from our answer), which states that "punishment by confiscatian shall not be imposed." I ask you if that is not a provision of the Colombian Constitution that "punishment by confiscation shall not be imposed"? A. Yes, it is so.

Q. That is, the Government has no right to confiscate property? A. Yes, sir.

Q. Of either citizens of Colombia or foreigners that may be domiciled there? A. Yes, sir; that's right.

Q. And also the 32d Article of the Constitution (of course, I quote this from our paper, which is liable to be checked by the Constitution itself), but I call your attention to the 32d Article of the Constitution; is it not this: "In time of peace no person shall be deprived of his property, wholly or in part, except as a punishment or judicial compunction, without compensation or indemnity in accordance with law." Is that a portion of the Constitution? A. Yes, sir.

Q. Now, the 33d Article. I would also call your attention to the text of that article, or the portion of it which I I would have you read: "The nation shall always be responsible for the expropriations made by the Government or its agents." A. Yes, sir.

Q. So that, if the forfeiture was made, it would come under that clause of the Cherry contract, to which I have referred—the Cherry contract to which I have referred—the 37th clause, providing for arbitration, was it not?

Mr. JOHNSON: That question is objected to—first, because it involves the hypothetical proposition of a forfeiture, of which fact there is no evidence in this case; and in the second place, because it calls for the witness to give an ex-
(1613) pression of opinion as to a hypothetical question arising in this case, and not as to the general law of the country, as to which only he has been examined in chief, and as to which only he is a competent witness.

Q. That was the 37th Article of the concession; the contract is found on page 20 of that paper you have in your hand, Mr. Calderon.

(Stenographer read question to witness.)

WITNESS: This says that the contract has been declared forfeited.

Q. Yes. "In case, for any reason, the Government declare the concession to be forfeited, the concessionary, or whoever may represent him, shall have the right to submit the matter to the decision of two experts—one to be appointed by the Government and the other by the Concessionary; and such experts shall appoint an umpire for the case of disagreement." A. Well, in case the Government, in case the executive had declared the contract forfeited, the case had to be submitted to arbitration according to the provisions of this.

Q. That would be valid—it had to be submitted to arbitration? A. Yes, sir; according to this, it would have to be submitted to arbitration.

Q. Under the special law approved and passed by Congress? A. Yes, sir; under this section 37.

Q. Well, now, behind all this is it not the law in Colombia that no forfeiture shall take place except for proper cause—there must be the existence of the proper cause to forfeit the contract—that is, the Government could not of its own will forfeit a contract unless there was due cause? A. Unless there was due cause. Of course, it is always stipulated in contracts that way.

Q. Now, in a dispute between a citizen of another country and the Republic of Colombia, you say that under the Constitution the Congress and the Executive have the right to prescribe a method which is considered proper for the adjustment of that dispute? A. Yes; it is the same (1614) with foreigners or Colombians. Of course, in contracts private stipulations can be made, providing for the settlement of questions arising out of the contract—how they may be settled. It is always customary to do that.

Q. After the method has been ascertained, then the parties may agree by convention or agreement in regard to the details for carrying it out? A. Yes, sir.

Q. Now, will you kindly look at this agreement of January 4, 1897, for submission to arbitration—the Spanish text of it begins on page 46—it is "Complainant's Exhibit No. 12," and the translation goes on to page 52? A. Yes.

Q. Now, we had the exhibit last spoken of, which was Exhibit 11, empowering the Executive to equitably compromise with the grantee of the railroad, and this convention made under the terms of that law. Would you kindly look at this convention—Complainant's Exhibit No. 12—either in the English or the Spanish? A. Yes, sir.

Q. Have you seen it before Mr. Calderon? A. Yes, sir; I have seen it.

Q. Well, now under the law of the Republic of Colombia that is a valid agreement between the parties, is it not? A. Yes, sir.

Mr. CROSS: That is all.

RE-DIRECT EXAMINATION.

Q. (By Mr. JOHNSON:) What do you understand by confiscation, Mr. Calderon?

Mr. MURPHY: Objected to.

WITNESS: Well, confiscation is the depriving of property of somebody, either private property or public property taken away without indemnity for it. It is the same as is practiced in war.

Q. Is taking property without indemnity, for instance, where a person has been convicted of crime and adjudged to pay a fine for that crime—is that confiscation?

Mr. MURPHY: I object to that on the grounds stated (1615) before and upon the additional grounds that the witness has been called to testify as to the laws of the Republic of Colombia and not as to the meaning of terms in

the Engligh language, which are open to definition of another character.

WITNESS: No.

Q. Do you understand that the taking of property by virtue of the terms of a contract or by due process of the law of the land is confication?

Mr. MURPHY: Objected to on the same grounds.

WITNESS: No; I do not consider that confiscation.

CLIMACO CALDERON.

Witness:

WILLIAM F. MURRAY.

Mr. JOHNSON: That is all.

Mr. CROSS: No further questions.

STIPULATION. It is hereby agreed by and between counsel for complainant and defendants that Defendants' Exhibit No. 1 A. P. may be translated by Arthur W. Fergusson, a witness for complainant, and that his translation of said documents is accepted and shall be annexed to and returned with the depositions now being taken; and also it is further stipulated that power of attorney Defendants' Exhibit No. 1 A. P. was duly filed in the proper office at Bogota before January 4, 1897, and that the same is one of the instruments referred to in the Convention of January 4, 1897, Complainant's Exhibit No. 12, filed with the original Bill of Complaint.

It is admitted by counsel for defendants that Francisco J. Cisneros left the United States before the filing of the Bill in this case and did not return to this country until June, 1898; that when he returned he was in feeble health and counsel for complainant and defendants agreed to take his deposition in this cause as a witness for complainant and for that purpose attended in New York at the Windsor Hotel in June and July, 1898; that said Cisneros was too (1616) ill to be seen by either of the counsel and, after waiting several days, the taking of his deposition was postponed to await his recovery; that he never sufficiently recovered, but died on the 7th day of July, 1898.

And I hereby further certify that said depositions of the said witnesses were then and there, in my presence, taken down stenographically by William F. Murray, Esq., the stenographer selected by me and agreed upon by counsel for the parties in their stipulations heretofore referred to, and by said stenographer subsequently transcribed into

typewriting, together with a report of all and every other proceeding of counsel therewith connected, as appears by his certificate herein written, to-wit:

I, William F. Murray, do hereby certify that I did correctly take down stenographically and accurately transcribe into typewriting all the testimony, *verbatim*, of all the witnesses examined before Albert Poor, Esq., notary public, under the above stipulations of counsel, together with all the proceedings of counsel therein, which testimony and proceedings are fully and accurately set forth above as they in fact and actually took place.

WILLIAM F. MURRAY,
Stenographer.

And further: I, the said Albert Poor, notary public, in certify that the exhibits attached to said depositions and marked respectively as Exhibit 1 A. P., Exhibit 8 A. P., Exhibit 11 A. P., Exhibit 28 A. P., Exhibit 31 A. P., Exhibit 35 A. P., Exhibit 40 A. P., Exhibit 42A. P., Exhibit 43 A. P., Exhibit 50 A. P., Exhibit 54 A. P., Exhibit 57 A. P., Exhibit 60 A. P., Exhibit 61 A. P., Exhibit 64 A P., Exhibit 80 A. P., Exhibit 85 A. P., Exhibit 86 A. P., Exhibit 91 A. P., Exhibit 93 A. P., Exhibit 94 A. P., Exhibit 95 A, P., Exhibit 96 A. P., Exhibit 97 A. P., Exhibit 98 A. P., Exhibit 99 A. P., Exhibit 103 A. P., Exhibit 106 A. P., and Defendants' Exhibit No. 1 A. P., together with the English translations thereof to each one attached, are (1617) the identical exhibits put in evidence by counsel for the parties and are all the exhibits offered in evidence by them or any of them.

I further certify that I am not of counsel for any of the parties in this litigation, and am not interested in the proceedings or the result thereof, and that my fee for taking the said depositions, amounting to two hundred and three dollars, has been paid by the complainant ($203.00.)

Given under my hand and notarial seal this sixth day of September, 1899.

ALBERT POOR,
Notary Public.

[Notary's Seal.]

Translation of Exhibit I A. P.

(A. W. F.)

Buenaventura, January 5, 1891.

Señor Don Victor Mallarino,
Attorney of the Concessionary
of the Cauca Railroad,
Bogota.

My Dear Sir.—To the end that you bring it to the notice of the Government, I have the honor to append a copy of the first orders I have dictated after having assumed charge of this railroad.

Since of late the mules have been insufficient to transport all the freight the trains have carried to Cordoba, there have become collected in the warehouse at that place over 6,000 packages worth many thousands of dollars, and with respect to which it may be pretended to hold the company responsible in the event of an accident, surrounded as that warehouse is by straw huts. This moved me to issue one of the orders of which I send you a copy.

It has not been possible as yet to give any great impulse to the work, owing to the many feasts at this time of (1618) the year, which have distracted the peons; but I believe I could make assurances that within a few days a considerable number will be at work.

As you will see in one of the copies, I append a call has been made for bids to supply the peons with subsistence. The fear entertained of the small-pox and some other causes have caused plantains to become extremely scarce, to such an extent that I fear that at first it may be necessary, perhaps, to substitute another food, like rice for this.

For various reasons the superintendent has ordered that passenger and freight service shall not be conducted in push cars, save in extraordinary cases, or such as call for urgent action on the line.

The mail from the interior reaches Cordova on Sunday mornings, and as there is no regular train on that day it is necessary to bring it here on push cars, paying double wages as it is a feast day. I desire, therefore, that you make known to the Government that it should pay for that service, the value of which is $9.60, or change the day of arrival.

Your obedient servant.

J. L. CHERRY,
Concessionary.

Translation of Exhibit 8 A. P.

(A. W. F.)

55.

CAUCA RAILROAD,
Republic of Colombia.

Buenaventura, June 11, 1894.

H. E. THE MINISTER OF PUBLIC WORKS, Bogota:

I have the honor to reply to the communication of Y. E. of April 21st, through which a report is requested as to the Cauca Railroad, which I transmit to Senor Don Victor (1619) Mallarino, attorney in fact of the enterprise in Bogota, that he may forward it to Y. E., and I beg you will pardon the delay in answering, which was due to my absence from Colombia. I returned from the United States on the last steamer

1.

The total length of the railway line now daily in operation is 36.7 kilometers, according to the official measurement made by the commissioner of the Government; and it runs from Buenaventura to San Jose. Regular trains run on Tuesday, Thursday and Saturday, and receive passengers and freight, while on the other days, except Sunday, freight or construction trains run over the line.

The width of the line is three feet. The rails of the new part of the line are of the weight of 40 pounds per yard, and are of the best kind of Bessemer steel.

The rolling stock of the railroad consists of:

4 locomotives.
2 first-class passenger cars.
2 second-class passenger cars.
5 box-cars.
8 platform-cars.
1 steam pile-driver.

On the 19th of May last a contract was made for a new locomotive, Mogul type, of 25 tons, and 10 new trucks for freight cars.

The improvements introduced by me in the old section from Buenaventura to Cordoba, consist in the exchange of a large portion of the old 28-pound rails for new ones of 40 pounds, renewal of many thousand of old cross-ties, putting in (Motones) of steel for curves in the greater number of curves, and re-ballasting a great part of the line with rock ballast brought from a distance from 12 to 15 kilo-

meters, and repairing all the bridges. These repairs have cost much more than the total receipts of the line.

(1620) Among other very important works on the line constructed by me, I call especial attention to the steel bridges thrown over the Dagua River at San Cipriano and at Sucre, where it was formerly impossible to maintain a bridge of any other construction owing to the floods.

These bridges, which are of a single span, rest on steel cylinders filled with Roman cement, and measure at San Cipriano 201 feet, and at Sucre 175 feet.

On the part of the line constructed by me there are besides 50 wooden bridges.

The construction work is now going on as far as Catanga, which is about 7 kilometers from San Jose. I have constantly employed all the laborers it has been possible to secure. The total number of laborers in the force actually employed is 200, and this number, in my opinion, cannot be increased, save through the introduction of foreign workmen. For the purpose of introducing them, I have entered into arrangements which I have not been able to follow up by reason of the delay of the Government of Colombia in the performance of the obligations imposed upon it by the railroad concession, and under these circumstances I have not been inclined to go to the very heavy expense rendered necessary by the introduction of foreign laborers until the Government is ready to comply with its obligations.

Under my direction surveys of the line were made as far as Cali; these were made over several routes and executed by competent engineers. Of the several lines surveyed I have selected that which offers the greatest advantages and benefits. The plans and profiles are almost completed. The plans of the line as far as Sucre have previously been forwarded to the Department of Public Works, and the plan of the line beyond this point follows by mail.

If I am permitted, I believe it will be interesting to make a comparison between the sums spent by the Government during the management of the railroad by the said Government and the amount paid this enterprise.

(1621) It is seen, for instance, that for the maintenance of the 20 kilometers of line from Buenaventura to Cordoba the Government has contributed from September, 1885, to August 1887, the amounts following:

Delivered by the Buenaventura Custom House	$154,937 30
" " " Tumaco " "	48,982 85
Bridle path	8,165 40
Tumaco Agency	3,228 10
Administrations of the Treasury	26,000 00
Remittance of the Government	17,600 00
Total	$258,853 65

Thus, for the maintenance only of the railroad from Buenaventura to Cordoba, the Government has had to spend, besides the proceeds of the line, $129,426.82 annually. The sums which the Government now pays for a line almost twice the length (36.7 kilometers) have not up to date exceeded $40,000.00, or $13,000.00 per annum, more or less. And even in case the Government had redeemed all it owes the enterprise, its expenses for the last three years would not exceed $122,000.00, or $40,000.00 per annum, with a difference or saving per annum in favor of the Government of $90,000.00, although the line is twice as long, and the value of the paper money much less than at the time mentioned.

In conclusion, it is very pleasant for me to inform Y. E. that that during the three and a half years of my administration, no passenger has suffered an accident of any kind on the trains of the Cauca Railroad.

God preserve Y. E.

J. L. CHERRY,
President of the Cauca Railroad.

(1622) **Translation of Exhibit 11 A. P.**

42 (A. W. F.)

Bogotá, January 24, 1896.

Mr. Minister of the Treasury:

In accordance with the resolution of the 23d of the present month, which you have been good enough to communicate to me, in official communication No. 229 of section 6, and which has been accepted by me in my character as attorney in fact of the Cauca company I have the honor to annex to this the account for the guarantee of interest at five per cent. on the basis of thirty-eight thousand dollars American gold per kilometer, for the sixteen and one-half kilometers constructed by the company, interest from the 1st of January to the 31st of December, 1895.

God guard you,

J. L. CHERRY,

Attorney in fact for the "Cauca Company."

Translation Complainant's Exhibit No. 12, Spanish Text, and of Exhibit 28 A. P.

(A. W. F.)

Agreement Through which the Differences which Have Arisen Between the Government and "The Cauca Company," Growing out of the Contract for the Construction of the Cauca Railroad, are Terminated.

The undersigned, that is to say, Manuel Esguerra, in his capacity as Minister of the Treasury, authorized by the most excellent Vice-President of the Republic, charged with the Executive Power, hereinafter designated "The Government of Colombia," of the one part, and James L. Cherry, in his (1623) capacity as general manager, representative and attorney in fact of "The Cauca Company," organized in New York to carry out the construction of the Cauca railroad, which hereinafter will be designated The Company," of the other part, in conformity with the bases of agreement stipulated on the 27th day of November, 1896, between the Government of Colombia and Cherry, in his said capacity, bases agreed upon by virtue of the provisions of Article I. of Law 41 of 1896, and in view of the general power of attorney executed by the president of "The Cauca Company" to Cherry, before Mr. José C. Morales, notary public of the city of New York, on the 31st day of December, 1890, and under the special power of attorney also executed by the president of "The Cauca Company" to the same on the 23d day of October, 1895, before Mr. Julio C. Ponce de León, notary public of the said city of New York, have concluded the following agreement:

Art. I. The Government of Colombia and the company compromise and declare settled all pending differences between both parties, growing out of the contract approved by Law 16 of 1890 "concerning the construction of the railroad from Buenaventura to Manizales," through the stipulations set forth in the following articles:

Art. II. The company absolutely relinquishes the privilege of which Article I. of the contract approved by Law 16 of 1890 treats, and will deliver to the Government of Colombia within the fifteen days following that upon which this agreement shall be approved, the Cauca railroad with all its fixed plant and rolling stock on hand, works, buildings, tools, implements of all kinds, appurtenances, etc., etc. In exchange the Government of Colombia will pay to the company a just indemnity for the works and labors which the company may have executed during the time in which the undertaking has been in its charge, and for the rolling stock and other things it may have introduced destined for the railroad, and which at present exist.

(1624) Art. III. The Government of Colombia and the company recognize in advance as just and sole indemnity a sum which shall equal that which the company shall prove to have expended on the labors and works executed by it in the construction of the said railway and on the rolling stock, tools, etc., etc., introduced for use on the said road.

Art. IV. In order to fix the indemnity of which the foregoing articles treat, the Government of Colombia and the company agree to constitute a special commission composed of three (3) members named thus: One by the Minister of the Treasury of Colombia, another by the attorney in fact of "The Cauca Company," and a third by common accord, by the Secretary of State of the United States of America and the Minister of Colombia in Washington.

Art. V. The Government of Colombia and the company empower the commission to be constituted in the manner aforesaid to fix the indemnity hereinbefore referred to, the said commission to this end having to appraise the works, labor and material aforesaid. For this purpose and in order to thus fix the consequent indemnity, the commission must examine and consider the books and accounts of "The Cauca Company" in New York, the documents which the Government of Colombia and the company may present to it in support of their respective rights, and those the said commission shall demand; it shall inspect, on the ground, the works and labor of the railroad and the rolling stock in order to make the necessary comparisons

and verifications to determine the facts, which must serve as a basis for the fixing of the indemnity, being authorized for this purpose to examine witnesses and appoint experts; it shall fix a reasonable term for hearing the parties, for considering the allegations thereof and the proofs or data they may present relative to the determination of the works, labor, and material aforesaid, to the appraisement thereof and to the fixing of the consequent indemnity; and it shall establish the procedure to be followed in the exercise of the authority conferred upon it, (1625) both as to its own acts as well as to the acts of the parties.

Art. VI. Should any of the members of the commission decline or resign the charge, or cease to act for any reason, the proceedings of the former shall not be thereby invalidated, but its integrity shall be restored by new appointment, to be made by the party naming the missing member within thirty days, reckoned from that on which such default occurs. Should such party not comply with said obligation the Secretary of State of the United States of America and the Minister of Colombia in Washington shall by common accord proceed to name the person who shall fill the vacancy.

Art. VII. The Government of Colombia and "The Cauca Company" shall act before the commission in person or through attorneys in fact or representatives.

Art. VIII. The commission, in order to carry out the work laid down for it in this agreement and to reach its decision, shall meet at the place or places it may select; and shall dispose for the purpose of the term of one hundred and fifty (150) days, reckoned from the day of its organization, extendable for sixty (60) more, should justifiable delays occur.

Art. IX. The decision of the commission shall be final and unappealable; and the amount of the indemnity it may fix shall be paid to the company, as provided in the following article:

Art. X. The Government of Colombia, calculating approximately that "The Cauca Company" has invested in the work on the Cauca railroad a sum of about two hundred thousand dollars ($200,000) (while the company considers this sum as much below the just price of the works and labor by it performed), and to the end of obtaining the immediate delivery of the railroad pursuant to the last part of Article I. of Law 41 of 1896, advances to the company the said sum of two hundred (1626) thousand dollars ($200,000), gold, on account of the aggregate of the indemnity the commission may fix, which said sum the company declares having received from the Government of Colombia to its entire satisfaction. Should the indem-

nity that may be fixed pursuant to this agreement be greater than the sum of two hundred thousand dollars, the Government will pay the excess, in the time, manner, and terms the commission may determine.

Art. XI. The delivery of which Article II. treats shall be made by the company to the person or corporation the Government may designate, through a strict inventory, in which must appear the pertinent specifications and annotations to the end that the condition of everything that may be delivered shall appear clearly determined in such inventory.

Art. XII. The expenses of the personnel, transportation and supplies of the commission shall be advanced in equal moities by the company and the Government of Colombia; and the commission shall determine whether such expenses are to be borne by one of the said parties, or by both.

Art. XIII. The stipulations set forth in this agreement once performed by the company and by the Government, the two parties shall be discharged and released, the differences that have arisen between them shall be at an end, and the rights and obligations growing out of the contract approved by Law 16 of 1890, above cited, shall be absolutely extinguished. In consequence, the company from this time forward relinquishes all claims against the Government of Colombia growing out of the contract aforesaid.

Art. XIV. Within eight days after the approval of this agreement the Minister of the Treasury of Colombia and the company shall name the member of the commission that belongs to each.

Art. XV. The commission created by this agreement shall organize in New York within sixty (60) days after the approval (1627) of the same, a term which may be extended for thirty (30) days more should justifiable delays arise.

Art. XVI. In order that this agreement may be valid it needs the approval of the most excellent Vice-President of the Republic charged with the Executive Power.

In Testimony Whereof, these presents are signed in the city of Bogotá on the fourth day of the month of January of eighteen hundred and ninety-seven.

MANUEL ESGUERRA,
J. L. CHERRY,
Attorney in fact,
General Manager of "The Cauca Company."

Executive Department, Bogotá,
January 4, 1897.

Approved: M. A. CARO.
The Minister of the Treasury, MANUEL ESGUERRA.

Ministry of the Treasury, Bogotá,
January 25, 1897.

It is a faithful copy of its original.
The Under Secretary, JUSTINIANO CANON.

Translation of Exhibit 35 A. P.

3. (A. W. F.)

Bogotá, June 7, 1891.

Mr. Minister of Public Works:

I have received instructions from my principal, Mr. J. L. Cherry, concessionary of the Cauca railroad, to petition the Government, as I respectfully do through the very worthy medium of Y. E., to modify Articles 8 and 12 of the contract of August 27, 1890, relating to the construction of the railroad (1628) from Buenaventura to Manizales, pursuant to Article 2 of Law 16 of 1890 (October 18), in the sense of leaving to all the line that may be constructed a width between rails equal to that the part built between Buenaventura and Cordoba now has; waiving, in this event, as provided in the final part of the said Article 2, the guaranty of five per cent. (5 %) annually of which Article 8 of the Contract treats, regarding the part constructed between Buenaventura and Córdoba, and offering at the same time to make a reduction of five hundred *pesos* ($500.) in the price fixed for each kilometer of railroad over the whole line from Córdoba to Cali, and from this point to Manizales—a reduction which is not paltry when bearing in mind that the difference in the cost price between a railroad of one meter in width and one of three feet is insignificant. Moreover, one gives as good service as the other, as experience has demonstrated, I only having to suggest in this regard that the Denver and Rio Grande R. R., South Pacific Coast R. R., California and Nevada R. R., and many other railroads in the United States have only three feet of width between rails. Besides, and without referring to the time to be saved, there is an evident advantage in not giving the Cauca railroad a greater width than that of the line between Puerto Berrio and Medellin, with which it will connect sooner or later.

As until this point (the width of the road) is finally settled, the locomotives, rolling stock, etc., cannot be ordered, I earnestly beg Y. E. to be pleased to make known to me, at the

earliest possible moment, the decision upon this memorial. Should it be in the sense of leaving to the line a width of one meter, I beg in the most respectful manner that my principal be granted authority to continue the line from Córdoba to Juntas with the same width as that between Buenaventura and Córdoba, in order that traffic may not be interrupted, and that the material necessary for the enterprise may be transported, (1629) under the well understood condition of giving it the width of one meter between rails as soon as the Government may so require.

Mr. Minister,

VICTOR MALLARINO.

Translation of Exhibit 40 A. P.

12. (A. W. F.)

Bogotá, July 28, 1891.

Mr. Minister of Public Works:

In a note numbered 293, dated June 11th last, Y. E. was pleased to communicate to me, replying to the memorial I had the honor to send to your Ministry under date of the 7th of said month, that the concessionary of the Cauca railroad was authorized to give the line between Córdoba and Juntas a width of three feet between rails, on condition of widening it to a meter so soon as the Government should require it; but as the interest of the enterprise, for reasons which are not unknown to Y. E., is to carry the railroad as far as Juntas with the same width as the part constructed between Buenaventura and Córdoba has, I very respectfully solicit that Y. E. be pleased to modify the said authority in the sense that the Government will not order that a width of one meter between rails be given to the line between Córdoba and Juntas before the first day of June next (1892).

God preserve Y. E.

VICTOR MALLARINO.

Translation of Exhibit 42 A. P.

14. (A. W. F.)

Bogotá, August 3, 1891.

Mr. Minister of Public Works, Present:

I have the honor to bring to the knowledge of the Govern- (1630) ment, through the very worthy medium of Y. E., that my principal, Mr. James L. Cherry, concessionary of the Cauca railroad, assigned the contract number 20, "Relating to the construction of the railroad from Buenaventura to Manizales," to a company called the "Cauca Company," which has assumed

all the rights and obligations of the said contract. The assignment was made through a deed which Y. E. has had before him, forwarded to the Ministry on condition of its return, by Messrs. Camacho Roldán & Tamayo; executed on the sixth of April of this year, before Mr. José G. Morales, a notary public of New York, with all due formalities. A copy of the said deed, duly authenticated, I will shortly forwarded to Y. E.

Mr. J. L. Cherry is charged with the management of the work of the enterprise, with full power and authority to enter into all kinds of negotiations with the Government relative to said enterprise.

It is pleasant for me, at the same time, to add to Y. E. that the persons forming the "Cauca Company" are of the highest respectability, one of whom is Mr. C. F. Schramme, treasurer-general of the company, who is now in this capitol, duly authorized to confer with the Government in everything relating to this important enterprise.

God preserve Y. E.

VICTOR MALLARINO.

Translation of Exhibit 43 A. P.

15. (A. W. F.)

Bogotá, August 18, 1891.

Mr. Minister of Public Works:

By request of Mr. James L. Cherry, general attorney in fact of the Cauca railway enterprise, I have the honor to transcribe to Y. E. the telegram which under date of the 14th (1631) instant the said Mr. Cherry sent me from Buenaventura:

"Kindly bring to the knowledge of the Government that there have been terminated and turned over to public service nine and a half (9½) kilometers of railroad beyond Córdoba, and five (5) kilometers more are about to be finished. I therefore respectfully request the Government to pay me the deposit of fifty thousand *pesos*, American gold, with interest, according to the terms of Articles 25 and 26 of my Concession. I beg you to push this matter."

I improve this occasion to send Y. E., covering five written leaves, a duly authenticated copy of the deed setting forth the assignment made by Mr. Cherry to the company styled "Cauca Company" of the contract number 20 relating to the construction of the railroad from Buenaventura to Manizales.

God preserve Y. E.

VICTOR MALLARINO.

Translation of Exhibit 50 A. P.

27. (A. W. F.)

Bogotá, November 27, 1891.

Mr. Minister of Public Works:

As an addition to the memorial which under date of October 31 last, I sent to your department, I have the honor to inform Y. E. that I am authorized by Mr. J. L. Cherry, director-general of the works of the Cauca railroad enterprise, to assure the Government that the part of the road constructed by the "Cauca Company" has cost two hundred thousand dollars ($200,000), American gold, as appears from the cablegram number 487, dated the 25th instant, which I take the liberty of accompanying to Y. E. I therefore reiterate my request in the premises in the most respectful manner, certain that Y. E. (1632) will decide upon the return of the fifty thousand dollars ($50,000), American gold, deposited as a guarantee for the performance of the obligations contracted by the concessionary of the Cauca railroad.

Mr. Minister,

VICTOR MALLARINO.

Translation of Exhibit 54 A. P.

39. (A. W. F.)

Bogotá, July 7, 1892.

Mr. Minister of Public Works:

For the information of the Government, I have the honor to inform Y. E. that the new line of the Cauca railroad was finished and opened to public service as follows, as the director-general of the enterprise communicates to me under date of the 20th of last month:

From Córdoba to Caballetes—9.94 kilometers, on July 3, 1891. This measurement was officially confirmed by agents of the Government. From Caballetes to Piedra Piedra, 1 kilometer, on the 1st of February last. From Piedra Piedra to Bodegas, 1 kilometer, on March 5 last. From Bodegas to the bank of the Dagua river, opposite new Sucre, 2.33 kilometers, on June 8th last. The total distance from Córdoba to the bank of the Dagua opposite new Sucre is estimated at 14.35 kilometers of new line now opened to traffic and public service. The distance from Caballetes to Sucre was taken from the original profile of the engineers; but so as to reduce the gradients and improve the line, variations have been made in the original survey, and the line is probably more than fifteen kilometers in length.

The measurement will be made with great accuracy, and (1633) I have received instructions to respectfully request the

Government, as I now do, to name one or more agents with whose assistance and co-operation these measurements may be made.

God preserve Y. E.

VICTOR MALLARINO.

Translation of Exhibit 57 A. P.

45. (A. W. F.)

Bogotá, September 26, 1892.

Mr. Minister of Public Works, Present:

The efforts made by the Cauca railroad enterprise to give the most energetic impulse to the work in order to finish it within the time set by the contract are known to the Government. Unfortunately, all those efforts have been to a great extent fruitless owing to the company having found itself in the impossibility of securing a sufficient number of workmen. Y. E. is in fact informed that no means have been spared to obtain workmen through large expenditures of money, as I had the honor to make known to Y. E. in the memorial dated July 18 last, in which I found myself compelled also to protest against the action of some authorities of the Department of Cauca, which contributed to making these sacrifices barren. Y. E. also knows that recourse was had to the method of bringing, at great expense, workmen from Jamaica, which produced no result other than a heavy loss to the enterprise, for once in the country they refused to carry out their contracts, and the support of the authorities which was sought to compel them to perform the same was not obtained. Moreover, the enterprise has suffered delays occasioned by the Government's slowness in returning the $50,000 in American gold, of which Article 25 of the (1634) Contract treats—a sum which was demanded, with the documents in the case, on October 31, 1891; its return not having been decreed until March of this year, which caused alarm among the stockholding capitalists of New York, and consequent delay in the payment of the sums which they should furnish. The enterprise has also suffered difficulties and losses through the Government having on several occasions withdrawn the military force which was solicited and obtained in accordance with the provisions of Article 27 of the Contract. By reason of the foregoing considerations and in conformity with the provisions of the final part of Article 4 of the contract, I very respectfully solicit that the Government grant a reasonable and just extension to the enterprise in question within which to terminate and give over to public service the first section of the line, which is that comprised between the Port of Buenaventura and the city of Cali.

Mr. Minister,

VICTOR MALLARINO.

Translation of Exhibit 60 A. P.

46. (A. W. F.)

Bogotá, December 4, 1892.

Mr. Minister of Public Works, Present:

I have instructions from the president and director-general of the Cauca railroad enterprise to request the Government, as I respectfully do through the medium of this memorial, pursuant to the provisions of Law 64 of this year (November 20) to grant permission to introduce up to three thousand (3,000) Chinese workmen intended for work on the said enterprise; the latter binding itself, should the Government so require, to take them out of the territory of the Republic whenever they shall have performed their respective contracts.

(1635) I do not doubt that my petition will be acted on favorably so soon as the law to which I have referred shall have been published, for the Government well knows how useless have been the efforts of the enterprise up to the present to secure workmen.

Mr. Minister,

VICTOR MALLARINO.

Translation of Exhibit 61 A. P.

48 (A. W. F.)

CONTRACT No 98 OF 1892.

Concluded with Senor Don Victor Mallarino, General Attorney in Fact of the Cauca Railroad Company, additional to and Amendatory of that of August 27, 1890, Relating to the Construction of the Railroad from Buenaventura to Manizales.

José Manuel Grenaga G, Minister of Public Works, thereunto duly authorized by the most excellent the Vice-President of the Republic, exercising the Executive Power, in the name of the Government, of the one part, and Victor Mallarino, in the capacity of general attorney in fact of the Cauca Railroad Company, in the name of the latter, of the other part, have concluded the contract following:

Article 1. The Government, in view of the authority conferred upon it by Article 1 of Law 64 of the present year, grants permission to the Cauca Railroad Company to the end that it may introduce into the country up to three thousand (3,000) Chinese laborers, intended solely and exclusively for work on the railroad.

Article 2. Mallarino, in the name of the company, binds himself to cause the laborers of which the foregoing article

treats to leave the country as soon as the Government shall require it after the railroad work is completed, or after the contracts which the company may enter into with the said (1636) laborers for such work shall have been performed. In order to comply with the stipulations of this article Mallarino will advise this Ministry of the contracts the company may conclude.

Article 3. The Government agrees to extend for two years the term for the completion and turning over to the public service of the first section of the line of railroad, which is that comprised between the Port of Buenaventura and the city of Cali; said extension will be reckoned from the 18th day of October, 1894, to the 18th day of October, 1896.

Article 4. This contract only needs, in order that it be carried into execution, the approval of the most excellent Vice-President of the Republic, exercising the Executive Power.

In Testimony Whereof, two copies of like tenor are signed in Bogotá on the tenth of December of eighteen hundred and ninety-two.

VICTOR MALLARINO.

JOSE MANUEL GRENAGA G.

Executive Government,
Bogotá, December eleven of 1892.

Approved:

M. A. CARO.

JOSE MANUEL GRENAGA G,
Minister of Public Works.

Translation of Exhibit 64 A. P.

5 (A. W. F.)

Bogotá, September 6, 1893.

Mr. Minister of Public Works:

For the information of the Government, I have the honor to transcribe for Your Excellency the telegram which, under (1637) the date of the second instant, was addressed to me by the director-general of the enterprise of the Cauca railroad.

Please inform the Government that the line is in operation up to San José to a distance of thirty-seven kilometers from Buenaventura. Signed J. L. Cherry per E. Blum.

I improve this opportunity to beg respectfully that you will give reply to the note which I had the honor to address to your office under date of the 24th of July last.

God guard you,

VICTOR MALLARINO.

Translation of Exhibit 80 A. P.

65 (A. W. F.)

Bogotá, January 15, 1895.

Mr. Minister of the Treasury, Present:

In a memorial sent to the Minister of Public Works, under date of October 24 last, I requested the Government, in my capacity as general attorney in fact of the Cauca railroad enterprise to extend for a year and a half, reckoned from the end of the month of October of eighteen hundred and ninety-six (1896), the construction of the first part of the line—an extension to which the enterprise has a perfect right, according to the respective contract, as Y. E. may see by bringing before you my said memorial, the receipt of which has not even been acknowledged. Under the same date of October 24, last, I had the honor to send another memorial to the Minister of Public Works, of the receipt of which I have had no acknowledgement either, in which, after making known to the Government the injuries which have been done the enterprise through the failures of performance of its obligations on the part of the Government, I submit to his consideration some propositions which demonstrate that the enterprise is determined to carry the work (1638) out in the shortest possible time, if on its part the Government will give a guarantee that it will opportunely fulfill its obligations; and to that end the enterprise offers to deposit to the order of the Government a large sum as a guarantee that it will fulfill its engagements. The Government is also offered the sale of the enterprise.

In this situation the Congress at its last session enacted a law by which it is provided that the Government proceed to declare forfeited the contract of August 27, 1890, relating to the construction of the railroad from Buenaventura to Manizales, as the Congress would not agree to approve contract number 98, of 1892, relating to an extension for the construction of the first part of the line. In consequence, I have received reiterated instructions from my principal to lay before the Government, as I very respectfully make bold to do through the medium of this memorial, a formal protest against the said law as prejudicial to the interests of the enterprise, whose rights and duties, as well as the rights and duties of the Government, are clearly recorded in the respective contract.

God preserve Y. E.

VICTOR MALLARINO,
General Attorney in Fact.

Translation of Exhibit 85 A. P.

67 (A. W. F.)

Bogotá, March 15, 1895.

Mr. Minister of the Treasury, Present:

Mr. J. L. Cherry, concessionary of the Cauca railroad, tells me in a telegram dated the 7th instant, what I here copy:

"I beg you to kindly request the Government to decide upon its action with respect to all the pending questions between it and the Cauca railroad as soon as possible, and, in order to (1639) bring about this object, it authorize its officials to take up this matter on the date nearest to my arrival at Bogotá, where I shall be as soon as I receive a favorable reply."

Very well; if, pursuant to the provisions of Article 1 of Law 60 of 1894, the Government declares forfeited the contract for the construction of the Cauca railroad, as the enterprise will make immediate use of the right granted it by Article 37 of the C[illegible]ract, in order that the point may be decided by arbitration, it seems clear and even evident that the Government cannot assume possession of the enterprise until after the experts shall have decided, and provided that this decision should be averse to the enterprise. However, I beg, in the most respectful manner that the Government, through the worthy organ of Y. E., be pleased to determine what will be the Government's action upon declaring the contract forfeited, pursuant to the provisions of Article 1 of the above cited Law 60 of 1894.

I also beg Y. E. to be pleased to act upon my memorial of the 5th instant at the earliest possible moment.

God preserve Y. E.

VICTOR MALLARINO.

Translation of Exhibit 86 A. P.

70 (A. W. F.)

Bogotá, April 18, 1895.

Mr. Minister of the Treasury, Present:

For the information of the Government, and pursuant to express orders from the concessionary of the Cauca railroad, I have the honor to transcribe to Y. E. the note which has been addressed to me from Buenaventura by Mr. James L. Cherry, dated the 1st instant, as well as the telegram from the same gentleman, bearing date of the 9th instant:

"After having addressed you my previous communication (1640) I received your telegram of March 26th, which says: 'Government just communicated to me in note of this date, as

reply to my memorial, that execution Article 1, Law 60, having become necessary, Government will not enter into possession enterprise until after arbitration tribunal decides.' The part of the resolution of the Government which says 'that it will not assume possession of the company until after the arbitration tribunal shall decide,' is satisfactory to me; but the part which refers to the time for its action, using the words 'it becoming necessary,' which to my mind means 'at such time as the Government pleases,' is wanting in clearness, and does not satisfy me, while the delays bring as a consequence to me very heavy charges and expenses. It seems to me clearly established that the Government has the intention of evading all action until it sees fit, without any consideration whatever for my rights in the premises.

"Repeated letters and telegrams have been sent to the Government informing it that I desired to obtain its consent to go on to Bogotá without loss of time and confer with the Government as to the solution of pending questions. The delays in the premises are due solely to the Government itself. The Government has received the report, and surely must recognize the impossibility of my continuing the construction of the railroad until the legality of Article 1 of Law 60 of 1894 is determined. Consequently, the Government is the only one responsible for the delay in prosecuting the construction work on the railroad. The Government has also been informed, and by its own experience has proved, when a part of the present line was being administered by the Government, that the expenses of operation are much greater than the receipts, and with the suspension of the payments which the custom-houses made me (1641) on account of the Government, I am obliged to assume oppressive outlays, outside of my obligations pursuant to the contract. The Government will also recognize that the obligations it contracted in Articles 7 and 10 are still in force and binding until the pending matters shall be settled legally and officially. Furthermore, be pleased to inform the Government that adequate compensation will be claimed:

"1. For the amount invested in the enterprise which may be found to be unproductive and useless by reason of the delays of the Government.

"2. For the interest due and which may be due hereafter unpaid by the Government.

"3. For the loss of time, personal services, depreciation of material and belongings, and any other injury or expense occasioned to the enterprise through this delay.

"I beg you to kindly present what is above set forth to the Government, and at the same time to officially inform it that

while the delays of the Government continue in the settlement of pending matters, Articles 14, 15 and 39 of the Contract will be considered as without effect, and Articles 7 and 10 with all the force of law."

The telegram says: "I received your two telegrams of March 26th. It seems to me that you misunderstand the reason for my protest of April 5. It is true that owing to the recent political disturbance the Government has had onerous obligations, but I claim that this is not a sufficient reason to indefinitely postpone the consideration of our case. The matters pending between the Government and myself cannot now be limited to the legality of the act of Congress, but they should also include, and any negotiation should take into consideration, steps for the settlement of the amount of damages which have (1642) been caused me by the act of Congress, as well as the failure of the Government in carrying out its obligations as per the contract; and such failures, and, in order that I may have full assurance of the payment of interest, the capital which must be invested for the construction of the railroad. In the memorial which I addressed to Mr. W. G. Gresham, Secretary of State of the United States, a copy of which I send you, are set forth my reasons for declaring that there is no ground for arbitration in the law of forfeiture passed by the last Congress, and in the same memorial you will note my declaration that this act of forfeiture is a [illegible]nial of justice. Consequently, my telegram and letter should be understood as meaning that any arbitration tribunal should have sufficient authority to take as the basis of settlement one or the other of the propositions contained in my letter of September 6, 1894, and to this end it is indispensable that the Government treat with me personally as to the just and equitable means to definitely settle pending matters between the two parties. I beg you will kindly communicate this telegram to the Government."

Mr. J. L. Cherry further tells me in a telegram dated the 16th instant, the following: "Your letter of March 26th received. Through it I understand that considerable time must elapse before the Government will be ready to negotiate with me as to the said matters. If I do not receive from you advices in another sense, I will return to New York by steamer leaving Buenaventura on the 20th instant. I will always be ready to return without delay upon being informed that the Government is ready to proceed with our negotiations."

Therefore, I beg in the most respectful manner of the Government through the worthy medium of Y. E., that it take into consideration the above opinions, and would to God it were (1643) possible, despite the pressure of time, for Y. E. to give

me a reply that I could forward to Mr. Cherry before the 20th instant.

God preserve Y. E.

VICTOR MALLARINO.

Translation of Exhibit 91 A. P.

14 (A. W. F.)

Bogotá, Aug. 16, 1895.

Mr. Minister of Treasury:

In reply to the very polite note of your department, No. 131, dated the 10th instant, which I only received yesterday, I have the honor to manifest to Your Excellency that the copy of the deed which you ask of me was sent to the Minister of Public Works enclosed in my communication of the 18th of August, 1891, which concludes thus:

"I take this opportunity to enclose to Your Excellency in five written sheets, a duly authorized copy of the deed in which appears the transfer or assignment made by Mr. Cherry, in favor of the company called the Cauca Company, of the Contract No. 20 in regard to the construction of the railroad from Buenaventura to Manizales."

However, if Your Excellency needs a new copy it would be very pleasant to me to furnish it to you.

Very respectfully, &c.,

VICTOR MALLARINO.

Translation of Exhibit 93 A. P.

18 (A. W. F.)

Bogotá, August 24, 1895.

Mr. Minister of (Public Works) the Treasury:

I have the honor to acknowledge receipt of the note from (1644) your department, No. 136, section 6, dated the 21st instant, which has just been delivered to me, with the annexed documents, to which Your Excellency refers.

As it is in Buenaventura where the examination of the accounts must be made, I will send by the next post the documents, together with the note of Your Excellency referred to.

I ought to advise Your Excellency, as I had the honor to inform the Minister of Public Works on the 8th of July, 1892, on transcribing what Mr. Cherry said to me under date of the 20th of June of the same year, that although by Article 10 of the contract it is established that the payment of interest ought to be made in the month of January of each year, by special agreement with Mr. C. F. Schramme, general treasurer of the

Cauca Company, it was provided that said interest should be liquidated in warrants on the first of January and the first of July of each year.

Anew, and with the proper respect, I reiterate my petition contained in my memorial of the 12th instant, that Your Excellency will please direct the payment of the last account, dated the 5th of July last, since I have received repeated instructions from Mr. Cherry in this respect.

God guard Y. E.

VICTOR MALLARINO.

Translation of Exhibit 94 A. P.

19 (A. W. F.)

Bogotá, 30th of August, 1895.

Mr. Minister of the Treasury:

I have the honor to acknowledge the receipt of Your Excellency's polite communication from that department, No. 139, section 6, dated 27th instant.

In your note of the 23rd of February, 1892, His Excellency, the Minister of Public Works, was good enough to inform (1645) me that he had not been able to verify the examination of the accounts of the Cauca railroad because the accounting department was not at Buenaventura.

It is, therefore, in New York, where the original accounts are to be found.

God guard Y. E.

VICTOR MALLARINO.

Translation of Exhibit 95 A. P.

20 (A. W. F.)

Bogotá, 3d September, 1895.

Mr. Minister of the Treasury:

To-day I have addressed myself by telegraph to Buenaventura, asking the information which Your Excellency is good enough to ask me in your very polite favor of the 31st of August last, which I will have the honor to transmit to Your Excellency as soon as I receive it.

God guard Y. E.

VICTOR MALLARINO.

Translation of Exhibit 96 A. P.

21 (A. W. F.)

Bogotá, 6th of September, 1895.

Mr. Minister of the Treasury:

I have the honor to transcribe to Your Excellency the telegram which, under date of yesterday, I received from Buenaventura in response to mine of the 3rd instant, to which I referred in my communication to your department of the same day.

The address of the office is 57 Broadway, New York, C. F. Schramme, secretary and treasurer.

God guard Your Excellency.

VICTOR MALLARINO.

(1646)

Translation of Exhibit 97 A. P.

22 (A. W. F.)

Bogotá, September 12, 1895.

Mr. Minister of the Treasury:

Under date of yesterday I received from Buenaventura the following telegram which I have the honor to transcribe for Your Excellency:

"Mr. Cherry writes me please inform the Government that I will furnish certified copies of any account which it desires, and also copy of the certificate of incorporation of the Cauca Company, or of any other document which it asks for, through the office of Buenaventura."

God guard you, etc.

VICTOR MALLARINO.

Translation of Exhibit 98 A. P.

(A. W. F.)

Bogotá, 25th September, 1895.

Mr. Minister of the Treasury:

Yesterday there were delivered to me the two very polite communications of Your Excellency of the 14th and 19th of the present month, the last of which I have transmitted to-day by telegraph to Buenaventura.

As soon as I have received the reply I will have the honor to transcribe it to you.

God guard Y. E.

VICTOR MALLARINO.

Translation of Exhibit 99 A. P.

24 (A. W. F.)

Bogotá, 30th September, 1895.

Mr. Minister of the Treasury:

I have the honor to transcribe to Your Excellency the following telegram which has been addressed to me from Buena-
(1647) ventura, in response to mine to which I make reference in my communication to your department of the 25th instant:

" Replying to your telegram of the 25th, please inform the Government that the books of account of the company are at the disposal of the commissioner which the Government may name in New York. (Signed) James L. Cherry, per Edward Blum."

God guard Y. E.

VICTOR MALLARINO.

Translation of Exhibit 103 A. P.

36 (A. W. F.)

Bogotá, 7th of November, 1895.

Mr. Minister of the Treasury:

Confirming my previous communication of the 31st of October last past, I have the honor to inform you to-day that Mr. Cherry not being able to arrive in this city before a month, more or less, as he was to leave New York on the second instant, and as the second article of the resolution dictated by your department on the 16th of October last only admits a term of thirty days, counting from the day on which the resolution was communicated to the said Mr. Cherry or his legal representative, in order that he should make use of the right which is given him by Article 37 of the Contract, and I lacking any power in this premises, for which reason it can be considered in a certain manner, that for this purpose I am not the legal representative of Mr. Cherry, it is natural, and this I beg very respectfully from the Government, that they will extend the term in question for forty or fifty days more to give time to Mr. Cherry to arrive here before the expiration of the term.

I will thank you very much to give me a prompt reply.

God guard Y. E.

VICTOR MALLARINO.

(1648)

Translation of Exhibit 106 A. P.

43 (A. W. F.)

Bogotá, 12th of February, 1896.

Mr. Minister of the Treasury:

I have the honor to acknowledge the receipt of the very polite note from your department, marked No. 241, of the 4th instant, in which you are kind enough to transcribe for me what, on the 28th of January last past, Your Excellency received from the Minister of the Treasury, relative to the order given to the directors of the custom-houses of the Pacific to pay to Mr. James L. Cherry the sum of $77,121, with fifty per centum of the gross receipts of the said custom-houses.

I give you the necessary thanks for this notice which I have already sent to Buenaventura.

God guard Y. E.

VICTOR MALLARINO.

Translation Made by Mr. Arthur W. Fergusson of Defendants' Exhibit No. 1, A. P., According to Stipulation.

In the city, county and State of New York, on the twenty-third day of October, one thousand eight hundred and ninety-five, before me, Julio Cd Ponce de Leon, a notary public of this city and county, and the subscribing witnesses, appeared Messrs. Henry A. Richardson, a native and resident of the city of New York, of lawful age, married, and a tradesman, and Gustav Schipper, a native and resident of this city, and of the State of New York, of lawful age, married, and a tradesman, who state that they are in full exercise of their civil rights, (1649) without I, the notary, knowing anything to the contrary; that in my judgment they have legal capacity for this act, and whom I certify I know personally, and stated: That they are respectively the president and secretary of the association styled "Cauca Company," a corporation duly organized according to the laws of the State of West Virginia, whose charter and by-laws they exhibit to me and I return after finding them in perfect accord with the laws of the said State; that their appointment is recorded at folio thirty of the minute book of the company, and was made at a regular meeting held on the eighth day of January, one thousand eight hundred and ninety-four, as is evidenced by the minutes thereof, which are exhibited to me; that this company, at a session held on the twenty-second day of the present month of October, adopted the following resolution, which appears at folio of the minute book, they exhibit to me, where it is found written in the Eng-

lish language, and which, translated by me, the notary, faithfully and accurately into the Castilian tongue, says as follows:

"Whereas the Government of the Republic of Colombia, South America, by a written contract which, under the name of contract number twenty, executed the seventeenth day of August, one thousand eight hundred and ninety, and approved by the Legislature of Colombia, granted to James L. Cherry the right to construct and operate the Cauca railroad under the conditions therein expressed, which contract was later assigned by said James L. Cherry to the Cauca Company, and is to-day the property of the said company, subject, nevertheless, to the terms of a contract concluded with the Cauca Company, and which is at present the property of 'The Colombian Construction and Improvement Company,' a copy of which is to be found in the archives of the company;

"And whereas certain failures in the performance of the obligations of the Colombian Government, pursuant to said contract numbered twenty and other differences have arisen (1650) which have delayed the construction of said railroad and caused injuries and losses to the Cauca Company;

"And whereas a declaration of forfeiture of said contract has been published by the legislative and executive departments of the Republic of Colombia, which the company considers unjust and prejudicial to its interests;

"And whereas it is considered of the greatest importance that these conditions shall be promptly settled, it is therefore

Resolved, That the president of the Cauca Company be by these presents authorized and empowered to confer and execute in due legal form under the seal of the said company and the signature of its secretary a power of attorney granting and conferring upon said James L. Cherry full and complete power to carry out and determine conditions of settlement with the Government of Colombia of all the matters, questions and differences now pending or which may hereafter arise with the Government of Colombia with relation to said contract, and full power and authority, in the representation of the same and acting in its name, to sell, assign or cancel the said contract number twenty, or to stipulate any changes, modifications or additions in and to the present conditions of the said contract he may consider advisable and beneficial to the contracting parties."

I, the notary, certify: That the foregoing is a faithful and accurate translation, and that this resolution is in conformity with the laws of the State of West Virginia and the by-laws of the company; wherefore the undersigned in compliance with the resolution of the company, and as president and secretary respectively of the same, declare that they confer ample, full

and sufficient authority as far as may be required and necessary by law on Mr. James L. Cherry, of lawful age, a resident of San Francisco, California, to the end that in the name of this company and representing it, its rights and action he be authorized:

First. To represent this company before all the authori-
(1651) ties—executive, legislative, administrative, judicial, municipal, military, or of any other kind whatsoever, in the Republic of Colombia, with full power and authority to enter into arrangements with the Government of Colombia in respect of all matters, questions, differences or discussions which may now be pending or may hereafter arise regarding that agreed upon with the Government of the Republic of Colombia, and which may refer to contract number twenty hereinbefore mentioned in the resolution, and concluded on the seventeenth day of August, one thousand eight hundred and ninety; to present memorials, petitions, etc., etc.; to request of the Executive and Legislative powers the recission of the declaration of forfeiture made against this company, taking all the steps that may be necessary in the premises.

Second. To agree to the sale, assignment or cancellation of the said contract number twenty, in case it be deemed advisable to the interests of this company, executing all deeds and documents the law may require in such cases.

Third. To agree with the Government of Colombia to all the alterations, modifications of and additions to the conditions of the existing contract he may consider advisable, and upon which he may agree with the said Government, and which shall be beneficial to the contracting parties.

Fourth. To execute as many deeds and documents as may be necessary and to take such judicial or extra-judicial steps as may be required, and which are not set forth in the preceding clauses in order to settle this matter, so that he shall not be delayed or embarrassed for want of authority, this being granted to him as ample as the law may permit, to the end that representing in all and for all the company, he shall act in the same manner as though the company were there present.

Approving and ratifying from the present moment in the name of the Cauca Company whatever its said attorney in fact may do in the name of the said company.

(1652) They so declare, and in virtue of being ignorant of the Spanish tongue I, the notary, translated this instrument fully to them in the English language, in the presence of Senor Leopoldo de Arrastia, who acted as interpreter, and of the subscribing witnesses, and, after it was read, the parties declared

their assent to all its clauses and they ratified and signed it, affixing the seal of the company in my presence and in that of the witnesses, Messrs. Felix Fuentes and Leopoldo Yzquierdo, residents, present and free from all legal infirmities.

{ Seal of the Cauca Company. } CAUCA COMPANY,
By HENRY A. RICHARDSON,
President.
GUSTAV SCHIPPER, Secretary.

As interpreter:
LEOPOLD DE ARRASTIA.

As witnesses:
FELIX FUENTES.
L. YZQUIERDO.

Before me:
JULIO C. PONCE DE LEON,
[Notarial Seal.] Notary Public New York County, 38.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia,
vs.
The Cauca Company and the Colombian Construction and Improvement Company. } In Equity

CITY AND COUNTY OF NEW YORK, *ss:*

Be it Remembered, That on the twelfth day of September, 1899, at the Waldorf-Astoria Hotel, in the city of New York, met before me, Edward C. Manners, a notary public in and for (1653) the State of New York, county of New York, Calderon Carlisle and William G. Johnson, counsel for the Republic of Colombia, complainant in the above entitled cause, and E. J. D. Cross, John W. Beaumont and Edward H. Murphy, counsel for the Cauca Company and The Colombian Construction and Improvement Company, the defendants in the said cause, and entered into the following stipulation, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants. } In Equity.

It is hereby stipulated and agreed by and between counsel for complainant and defendants, that the depositions of such

witnesses as may be produced for complainant may be taken before Edward C. Manners, Esq., a notary public in and for the city of New York at the Waldorf-Astoria Hotel in the said city of New York, on the 12th day of September, 1899, and the examination and cross-examination of said witnesses may be conducted orally and taken down stenographically and transcribed into typewriting by the said Manners, and when so transcribed shall be by him returned sealed up together with all documents and exhibits which may be put in evidence, and by him sent to the clerk of this court at Clarksburg, West Virginia; and when so transmitted the same shall be received in evidence, subject only to such objections as may be noted at the time of taking the testimony, which objections shall be duly entered by the stenographer at the time and place in the depositions when made.

It is further agreed that the signatures of the witnesses to their depositions shall be taken by the stenographer and (1654) notary to the typewritten transcription of their testimony.

If for any reason the signature of any witness cannot be obtained the notary and stenographer may add to the deposition of said witness the signature of such witness and the reason why the signature could not be obtained.

Sem*p*tember 12, 1899.

CARLISLE & JOHNSON,
Counsel for Complainants.
COWEN, CROSS & BOND,
EDWARD H. MURPHY,
JOHN W. BEAUMONT,
Counsel for Defendants.

And thereupon all the said parties and one Christian F. Schramme being there present, the taking of said depositions was proceeded with, and I did accurately take down stenographically and afterwards transcribe into typewriting all the testimony of the witnesses and the statements and proceedings of the counsel for all parties, which were as follows:

It is stipulated by and between counsel for the respective parties that the testimony now taken may be used, at the option of either party, on the issues arising upon the cross-bill as well as upon the issues arising upon the original bill.

It is also stipulated and agreed between counsel for the respective parties that the letter of Thomas F. Clark, vice-president of the Western Union Telegraph Company, dated September 11th, 1899, and herewith filed, may be received in evidence, to have like effect as if the said Clark had testified to the facts in said letter stated.

Letter marked "Exhibit Colombia No. 1, September 12, 1899."

Counsel for defendants not hereby waiving demand made upon complainant and its counsel made at Boston when testi-
(1655) mony was taken from August 22nd to August 25th, for the production of the cablegrams and letters received by the Minister of Hacienda referred to in the demand made for the production of such cablegrams and letters, as stated in the notice to produce then given.

Counsel for complainants announce that they have not in their possession the cablegrams called for by the counsel for the defence, and had no knowledge that any such cablegram had ever been sent until the deposition in Boston of Mr. Pena, and that on inquiry at the office of the Western Union Telegraph Company they are advised that the originals of cablegrams sent at that time are no longer in existence.

Mr. Johnson called Mr. Miller:

Harold R. Miller, called as a witness on the part of the complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Johnson:

Q. You are the same Mr. Harold R. Miller who testified as a witness for the complainant in this case in Boston, are you? A. I am.

Q. I would like you to state whether or not you are acquainted with the Spanish language, and, if so, to what extent? A. I am thoroughly acquainted with the Spanish language. I am just as familiar with the Spanish as with English.

Q. Will you state in what way you acquired that familiarity with these two languages? A. I have been nine years in Peru and five years in Colombia.

Q. Of what country are you a native? A. I am an Englishman.

Q. Did you spend the first part of your life in England? A. Until I was nine years old, I spent it in Europe. When I was nine years old, I went to Peru.

(1656) Q. While you were in South America, did you speak the Spanish language? A. I did.

Q. Have you been engaged in the use of the two laaguages during those years? A. I have, actively.

Q. Both languages? A. Both languages.

Q. During all of the time? A. During the whole time.

Q. You have already testified in this case that you had personal knowledge of the resignation of Mr. Pena from the Arbitration Commission on the 22nd of October, 1897; I will ask you to state what was the last date prior to October 22,

1897, on which any cablegram was sent by Mr. Cisneros, so far as you know, to the Colombian Government?

Mr. Cross. Objected to as incompetent, irrelevant, and not within the issues.

A. The last cablegram sent is printed in the minutes. I believe the date is September 11th.

Q. Do you know which volume it is printed in? A. In Volume III.

Q. Will you look at Exhibit 21, filed with the original bill, and state if the cablegram appears there, and on what page it appears? A. (Referring to book.) The last cablegram sent appears on pages II. and III. (Roman figures) of Exhibit 21, filed with the bill.

Q. What is the next date on which any cablegram was sent by Mr. Cisneros to the Colombian Government after September 11th, 1897, of which you have any personal knowledge?

Mr. Murphy. Objected to as immaterial, incompetent, irrelevant, and not within the issues.

A. The next telegram was sent after the delivery of the award. I believe the date is October the 24th.

Q. Do you know what day of the week it was? A. It was Sunday, I know. It was Sunday, October 24th.

Q. Were you present when that telegram of Sunday was prepared?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

(1657) A. I was.

Q. Where was that cablegram composed?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Clarendon Hotel.

Q. In what city? A. New York. 18th street and Fourth avenue.

Q. Can you state who were present when that cablegram was composed?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. There were present Mr. Cisneros, Mr. Carlisle, Mr. Johnson, and myself.

Q. You refer, by Mr. Carlisle and Mr. Johnson, to the counsel for the complainant in this case? A. I do.

Q. Do you know whether they were present by arrangement or not with Mr. Cisneros?

Mr. Murphy. Objected to as incompetent, immaterial and irrelevant and not within the issues.

A. On the Saturday before this Messrs. Carlisle and Johnson telephoned to Mr. Cisneros, and an interview was arranged for the following Sunday.

Q. Do you recall whether or not any telegram was received by Mr. Cisneros from Messrs. Carlisle and Johnson on that day—on that Saturday?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. They sent a telegram, saying they would be in New York on the following Sunday.

Q. Was that the means in which the telephone communication was arranged—by telegram?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Mr. Cisneros had a conversation with Carlisle and Johnson over the long-distance telephone, to the best of my knowledge; and in that way the interview was arranged; and (1658) subsequently Messrs. Carlisle and Johnson sent a telegram on the same subject.

Q. On the Sunday, you say, you were present when Mr. Cisneros, Mr. Carlisle, Mr. Johnson were together, and a cablegram was composed. I wish you to state who engaged in the composition of that cablegram, and what, if any, part you took in it?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. The English part of the telegram was drafted between Mr. Carlisle and Mr. Cisneros and Mr. Johnson, and subsequently it was put into Spanish between Mr. Cisneros and myself.

Q. Did Mr. Carlisle have anything to do with the converting the cablegram into Spanish? A. Oh, yes. There was discussion over the meaning of several words, then a draft was prepared, and subsequently altered. Finally the Spanish was agreed on; and I made some four copies of the final draft—the final copy.

Q. Do you know whether or not Mr. Carlisle was acquainted with the Spanish language?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Certainly I do. I have spoken with him several times.

Q. You think that the cablegram was composed in English first and was subsequently translated into Spanish; was that translation into Spanish the form in which it was to be sent over the wire?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. It was.

Q. What, if anything, did you have to do with the actual sending of that Spanish draft of the cablegram?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I sent the cablegram myself.

(1659) Q. Do you remember at what telegraph office you sent it? A. Yes. I sent it to the Morton House.

Q. Did you pay for it?

Mr. Murphy. Objected to as incompetent, immaterial and irrelevant, and not within the issues.

A. It was a Sunday, and we did not have enough money to pay for it. I paid for it the next day, and we had to pay full rates. As the cable had to go on Sunday we could not take advantage of the half-rate under which all government cables were sent.

Q. Who provided you with the money on Monday to pay for this cable?

Mr. Murphy. Objected to as incompetent, immaterial and irrelevant, and not within the issues.

A. Mr. Cisneros.

Q. You stated that four copies of this cablegram were made? A. There were.

Q. Will you please state what was done with them?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. There were practically five copies. There were four copies made on plain paper, and one copy made on the telegraph form. The four copies went—one to Messrs. Carlisle & Johnson; one to Mr. Pena; one to the Colombian Consul, and one was retained by Mr. Cisneros.

Q. Who was the Colombian Consul at that time? A. Climaco Calderon.

Q. Is that the same gentleman who testified in this case in Boston, and is now the Minister of Colombia at Washington?

Mr. Murphy. Objected to as immaterial, irrelevant, incompetent, and not within the issues.

A. It is the same person.

Q. Where was Mr. Pena at that time? A. He was living at the San Reno Hotel, Central Park.

Q. This city? A. This city; yes.

(1660) Q. Have you ever seen the copy of the cablegram of October 24th which was sent to the Consul, Mr. Calderon, since then?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I have.

Q. I will ask you please to look at this paper and state whether that is the paper? A. This is the copy that I sent to Mr. Calderon, to the best of my recollection.

Q. It that the copy of the cablegram which was sent from the Morton House on Sunday, the 24th of October, and which you say was composed jointly by Messrs. Cisneros, Carlisle, yourself, and Johnson?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. To the best of my recollection, this is the copy.

Q. I will ask you to state from whom did you receive it?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Do you refer to the copy in my hand?

Q. Yes. A. I received this from Mr. Polo.

Q. Who was Mr. Polo? A. Present acting Consul-General from Colombia in this city.

Q. In charge of that office formerly occupied by Mr. Calderon? A. That is so.

Q. I will ask you to look at that cable and state whether there are any typographical errors in it, and if so, state what they are?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. There are three.

Q. Will you please state what those typographical errors are, in their order? A. On the thirteenth line the word "caracter" is spelled with a "y" instead of a "t."

Q. Do you mean the thirteenth line from the top? A. From the top.

(1661) Q. What is the next? A. And on the same line "privado" is spelled with an "o" instead of a "p"—mere typographical errors. On the fourteenth line the third word should be "convenio" instead of "gobierno." That is all

Q. Did you do that typewriting yourself? A. I did.

Q. Those errors which you speak of, then, are your own? A. Yes, sir. Presumably they were corrected on the copy I wrote on the cable form, but they were not corrected on the four copies.

Q. At the top of this copy are written in manuscript the words "Ministro Hacienda—Bogota $248.37, Oct. 24, 1897." State if you can in whose handwriting those words are? A. It is Mr. Calderon's handwriting.

Q. Mr. Climaco Calderon? A. Mr. Climaco Calderon.

Q. The cablegram of October 24, 1897, has appended at the end the names "Cisneros Rengifo"; do you know by whom the name of "Rengifo" was added to that, as well as that of Mr. Cisneros?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. By Messrs. Carlisle & Johnson, by Mr. Rengifo's written authority.

Mr. Johnson. We now offer this cablegram in evidence, and we will subsequently offer in evidence a translation into English of the same, and for the convenience of counsel we now hand them the English translation which we propose to offer.

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues; also that the same is subsequent to the rendition of the award.

Copy cablegram of October 24, 1897, is marked "Exhibit Colombia, No. 2, September 12, 1899."

Q. Do you recall, on the occasion of the visit of Mr. Carlisle on that Sunday to Mr. Cisneros at the Clarendon Hotel, that Mr. Carlisle exhibited a letter purporting to be from (1662) General Rengifo, Chargé d'Affaires of Colombia in Washington?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. He did.

Q. Do you know the signature of General Rengifo? A. Oh, yes.

Q. Please look at the paper which I now show you and state whether that bears the signature of General Rengifo? A. It does.

Mr. Johnson. We now offer in evidence this letter of General Rengifo to Mr. Calderon Carlisle, dated Washington, October 23, 1897.

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

Letter marked "Exhibit Colombia, No. 3, September 12, 1899."

Mr. Johnson. Translation will be offered later on.

Q. On Roman pages III. and IV. of Exhibit 21 with the bill, appears a cablegram in Spanish and a translation into English from Caro at Bogota to Cisneros at New York. Do you recall the receipt of that by Mr. Cisneros?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Yes, I do.

Q. I will ask you to state when, after the 18th of September, 1897, Mr. Cisneros next received any cablegram from the Government of Colombia, so far as you know?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. There was no cable after that until the answer to the one sent on the 24th of October.

Q. When was that received?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Two or three days afterwards—the 27th, I think.

(1663) Q. Did you see it?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Certainly; several times.

Q. Was it in Spanish or English?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. In Spanish.

Q. Do you know where it now is?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Presumably in Mr. Cisneros' records in London.

Q. In whose possession was it when you last saw it? A. Mr. Cisneros'.

Q. Do you know what Mr. Cisneros did with the papers, including this one?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I do.

Q. What was done with them?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. They were sent in cases to Messrs. Enrique Cortez & Co., Eastcheap, London, where they are at the present moment, to the best of my knowledge.

Q. How long ago were they sent to London?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. They were sent to London one month before Cisneros left Colombia—May, 1898.

Q. Are you able to repeat the text in Spanish of that cablegram which Mr. Cisneros received from the Government on the 27th?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I am. It was only a few words.

(1664) Q. Will you please repeat it to the stenographer, giving him the words?

Mr. Murphy. Objected to as incompetent, immaterial and irrelevant, and not within the issues.

A. Gobierno aplaude y aprueba conducta. Autorizamos Rengifo.

Q. Do you recall whose signature that dispatch bore—what officer of the Government signed it?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I do not remember precisely. I think it was Esguerra.

Q. Now, will you please state what the English text of that cablegram was?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. It reads in English: "Government approves and applauds conduct. We are authorizing Rengifo."

Mr. Murphy. I desire to add this statement now on behalf of the defence; that is, that the objections that are made are entirely directed in the abstract to the character of the testimony offered, and not intended in any way to reflect upon the full and due authorization of the counsel for complainants to take the action in behalf of the government which was by them taken.

Q. Was that cablegram as to which you have just testified much talked about between you and Mr. Cisneros?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. Oh, yes; it was the subject of a good deal of discussion.

Q. Do you know whether or not it was exhibited to Mr. Pena?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. It was.

Q. Did you hear Mr. Pena testify in Boston that Mr. Cis-
(1665) neros exhibited to him a cablegram from the Government, in which it was stated that the Government "approved conduct," or words to that effect?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I did not. I was not present in the room when Mr. Pena's testimony was taken.

Q. Do you know of any other cablegram being received from the Government at or about that time, than this one?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I do not.

Q. Do you know of any other cablegram from the Government being exhibited at or about that time to Mr. Pena?

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

A. I have no knowledge of any other.

Q. Do you know of any cablegram having been received by Mr. Cisneros from the Government after this one of the 27th of October as to which you have just testified? A. No; there were no further cable communications from the Govern-

ment. Mr. Cisneros and myself left for London four days afterwards.

Q. (By Mr. Beaumont.) You are speaking simply as to your own personal knowledge. A. Yes.

No cross-examination.

HAROLD R. MILLER.

Attest:

EDWARD C. MANNERS.

It is hereby stipulated and agreed that, in the deposition of Dr. Luis Cuervo Marquez, Mr. Arthur W. Fergusson, heretofore qualified as an expert in this cause, may act as interpreter, the witness not being familiar with the English language, and that Mr. Fergusson shall begin his service by interpretating the oath to the witness.

(1666) Dr. Luis Cuervo Marquez, a witness called on the part of the complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carlisle.

It is agreed that the witness is at present the secretary of legation of the Republic of Colombia to the United States, and the only diplomatic representative of Colombia now in the United States.

Q. Will you please state, if you know, in whose charge are the archives of the Colombian Legation in the United States at this time?

Mr. Murphy. Objected to as incompetent, irrelevant, and immaterial, and not within the issues.

A. In my charge, as secretary of the legation.

Q. Will you look at the bundle of papers which I now show you and state what it is? I do not ask as to the contents of the papers, but simply the character of the bundle. A. It is a bundle of papers which forms a part of the archives of the legation, entitled "Bundle No. 8: Cauca Railroad, 1897."

Q. Are you authorized, as the diplomatic officer in charge of these archives, to give up any of these original papers for use in court?

Mr. Murphy. Objected to as incompetent, immaterial and irrelevant, and not within the issues.

A. I am not authorized to take any original papers from the archives of the legation; but I am authorized to permit copies, or authenticated copies to be made for presentation in this case.

Copies of cablegram dated July 5, 1897; of another cablegram dated Bogotá, October 26, 1897; Washington, October 27, 1897, and of letter dated December 9, 1897, it is agreed may be put in evidence with the same effect as the originals, but subject to all objections which may be made to the originals
(1667) themselves; these several enumerated documents being included within the bundle of papers described by the witness as "Bundle No. 8, Cauca Railroad, 1897."

Copy of cablegram dated July 5, 1897, is marked "Exhibit Colombia, No. 4, September 12, 1899."

Copy of cablegram dated Bogotá, October 26, '97, Washington, October 27, '97, is marked "Exhibit Colombia, No. 5, Sept. 12, 1899."

Letter dated December 9, 1897, marked "Exhibit Colombia, No. 6, Sept. 12, 1899."

Mr. Murphy. Objected to on the grounds of incompetency, immateriality, irrelevancy, and as not within the issues.

CROSS-EXAMINATION.

By Mr. Cross.

Q. Will you kindly look at the document which was in Bundle No. 8, not filed, and numbered "Numero 5888," dated "Bogotá, 12th February, 1897," and state whether in this document Cisneros was not appointed the due attorney of the Government of Colombia, and its representative, before the arbitration which was to be held in New York under what was known as the "convention" of January 4th, 1897?

Mr. Johnson. The question is objected to as calling for the witness to state the contents or his construction or part of the contents of a written instrument.

A. The document incorporated in Bundle No. 8 and which is numbered 5888, is an official communication from the Ministry of Foreign Relations of Colombia to the Chargé d'Affaires ad interim of Colombia in Washington, notifying him of the appointment of Francisco J. Cisneros as the representative and attorney in fact of the Government before the commission which was to be installed in New York on the 5th day of April next for the purpose of determining the matter pending between the Government and the Cauca Company.

(1668) Q. The 5th day of April "next" was 1897? A. The communication is dated February 12th, 1897, and the date referred to means 1897.

Q. I will ask you to read this letter as it was received by Minister Rengifo, and let it go into the record—from the date to the end.

Mr. Johnson. You offer it in evidence?

Mr. Cross. Yes; we offer it in evidence.

(The letter is then read in English, at the request of counsel for the defence by the interpreter, Mr. Fergusson.)

A. (Reading:)

Bogotá, February 12, 1897.

General JULIO RENGIFO, M.,

Charge d'Affairés ad interim of Colombia, in Washington:

In a note dated the 10th inst. distinguished by No. 486 from section 6, the Ministry of Hacienda tells me as follows:

"I have the honor to bring to the knowledge of Your Excellency that the most excellent Vice-President of the Republic, by decree dated the 4th instant, has appointed Senor don Francisco J. Cisneros as representative and attorney in fact of the Government for the commission which is to be installed in New York on the 5th of April, next, for the purpose of determining the matter pending between the Government and the Cauca Company, growing out of a contract relating to the construction of the Cauca railroad.

I take the liberty of begging your Excellency to be pleased to bring this fact to the knowledge of the Secretary of State of the United States of America and of the Minister of the Republic in Washington for the proper purposes."

On bringing this note to the knowledge of Your Excellency for what concerns that honorable legation in the premises, I beg Your Excellency to be pleased to notify the Secretary of State in Washington of the appointment which has been made of Senor Cisneros as such representative.

(1669) With sentiments of distinguished consideration, I am Your Excellency's very obedient servant,

"JORGE HOLGUIN."

Q. The Colombian Government, in its answer to the cross-bill filed in this cause, on pages 14 and 15, states as follows: "Further answering, this defendant says that it has fully disclosed herein all communications between this defendant and any of its officers relating to the resignation of said Pena; that the said cablegram from said Cisneros to the Minister of Hacienda of July 1, 1897, in substance, set out in said paragraph, and the reply thereto of July 5, 1897, and the letter of said Pena of October 22, 1897, to the Minister of Hacienda, set out in the fifth paragraph of said bill, are the only communications between this defendant and said Pena or Cisneros on the subject of said resignation and the said cablegram of July 1,

1897, is the only communication from this defendant on the subject.

This defendant further shows that the cablegram of the said Rengifo to this defendant advising against the resignation of said Pena, contained matter of a confidential nature relating to the affairs of this defendant with a foreign state, not the United States of America, and this defendant is advised that such communication is privileged and that it cannot therefore be required to disclose the same." Kindly look among the archives of your legation and state when Rengifo sent the cablegram to the Republic of Colombia, or any officer thereof.

Mr. Johnson. Objected to as not being proper cross-examination, the witness having been produced and examined in chief solely for the purpose of identifying certain documents as being part of the archives of the legation, and the offer of counsel for complainant being confined to three specific documents. It is further objected to as involving a recital of pleadings which are not evidence, and with which the witness has no acquiantance.

(1670) A. I will seek for it in the legation archives. In case it is there, I will present a copy of it.

Mr. Cross. There was undoubtedly a cablegram from General Rengifo to an officer of the Government speaking of the resignation proposed of Pena, and his advice against it. That is the one we refer to.

The Witness. I have no knowledge that any such telegram exists, but I shall seek in the archives of the legation; and in case a telegram of that character exists there I will present a copy of that part of it which refers to this case.

Mr. Cross. All except the part of it that refers to "a government not the United States of America."

Attest: DR. LUIS CUERVO MARQUEZ.

EDWARD C. MANNERS.

Mr. Cross. In Bundle No. 8, preceding the appointment of Professor Haupt by the joint action of the Colombian Minister or representative and the American Secretary of State, Mr. Sherman, there is a letter of March 15th, 1897, from Alvey A. Adee, then Assistant Secretary of State which the defendant proposes to offer in evidence. It is as follows:

"Personal. Department of State,
Washington, March 15, 1897.

My Dear Mr. RENGIFO:

We have a good man in view to act as third commissioner in the Cherry Arbitration Commission, but before proposing his name I should like to obtain more definite information as to

the compensation. If you have learned anything in this regard since our last interview, I should be pleased to hear from you.

I am, dear Mr. Rengifo, very cordially,

ALVEY A. ADEE.

Señor Don JULIO RENGIFO,
Charge d'Affaires ad interim,
Legation of Colombia."

(1671) Mr. Cross. Counsel for defendant offer this letter in evidence, and the stenographer will kindly record the same on the minutes.

Counsel for complainant now produce, in response to the demand of counsel for the defendants, the cablegram sent by General Rengifo on the 2nd day of July, 1897, and referred to in the answer to the cross-bill, with the exception of that portion which refers to a question of the Colombian Government with another government, not the United States, and requests the interpreter to read the same in English to the stenographer, omitting the part in pencil brackets.

The interpreter then read as follows:

"July 2, 1897.

"President CARO:

"I know Cisneros' cable to Minister Hacienda relating Cauca Railroad Commission matter. Government should think whether it can sustain grave situation which withdrawal from proceedings creates and then evading compliance Article 6, convention January 4. I beg you will pardon patriotic intrusion.

"RENGIFO."

Counsel for complainant offer in evidence eleven certified copies from the archives of the former Minister of Public Works and from the archives of the Ministry of Hacienda, which are numbered Exhibits Colombia 7-17, inclusive.

Counsel for defendant objects to each and every of the exhibits stated on the grounds they are irrelevant, incompetent, immaterial, and not within the issues.

Mr. Carlisle called Mr. Fergusson.

Arthur W. Fergusson, a witness called on the part of the complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Johnson.

Q. You are the same gentleman who testified before in this case in Boston? A. I am.

(1672) Q. Please look at "Exhibit Colombia No. 2, Sept. 12, 1899," and state whether you have translated that document? A. I did not translate it.

Q. Will you please translate it? A. There is a translation here which I will father.

Q. Is that translation which you have in your hand a correct translation of that cablegram? A. Yes, sir.

Q. Have you compared it yourself? A. Yes, sir.

Mr. Johnson. We offer this translation in evidence, to be marked "Translation of Exhibit Colombia No. 2, Sept. 12, 1899."

Mr. Murphy. Objected to as incompetent, immaterial, irrelevant, and not within the issues.

Q. Please look at Exhibit Colombia No. 3 and translate that exhibit.

The Witness:

"1728 I street,

"Washington, October 23, 1897.

"My Esteemed Sir and Friend:

"I send you open the letter for Mr. Cisneros. I do not believe that any difficulty will present itself, and, on the contrary, flatter myself with the idea that your well-meditated plan will be accepted with enthusiasm by that friend; but at any rate, I repeat that I uphold your ideas without any limitations whatever. The cable or cables that are to be addressed to the Government will be framed by you jointly, and you are fully authorized to make use of my signature; I consider all consultation unnecessary, my faith in you is absolute.

"I do not come to see you personally because I consider that you are engaged arranging for your trip, and I do not want to interrupt you; but I remain here at your orders, and will go to your house at any moment, should you so desire.

"I thank you for your kind determination, which I know how to appreciate.

(1673) "May you have a happy trip, and may everything be arranged favorably.

"Your friend and humble servant who kisses your hand,

"JULIO RENGIFO, M.

"Hon. Calderon Carlisle."

Q. Will you please look at Exhibits Colombia Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, and state whether or not you have translated the same into English. A. Yes.

Q. Are these translations, translations which you made of these documents? A. Yes.

Mr. Carlisle. We offer the translations in evidence, and the same are marked "Translations of Exhibits Colombia, Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17."

Mr. Cross. They are each objected to on the ground that they are immaterial, irrelevant and incompetent, and not within the issues of the case.

Mr. Cross. We have no questions to ask the witness, it being noted by the stenographer that counsel for the defendants have objected and intend to object to the admissibility of these documents, on the ground of their being irrelevant, immaterial, incompetent, and not within the issues.

Counsel for complainant presents the following stipulation, with directions to incorporate the same in the proceedings:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia,
vs.
The Cauca Company and the Colombian Construction and Improvement Company.

It being represented by Messrs. Carlisle and Johnson, counsel for the complainant, that all the following facts are (1674) within the personal knowledge of both of them, except what took place at the interview between Messrs. Rengifo and Pena and Mr. Carlisle on the evening of the 21st of October, 1897; and that all of said facts are within the personal knowledge of General Julio Rengifo, late Charge d'Affaires of the Republic of Colombia at Washington, and now Minister of the Republic of Colombia to the Republic of Ecuador; and it being further stated by said counsel that General Rengifo was expected to return to this country on or about the first of August, 1899, and to be available as a witness; and that even since his appointment as Minister to Ecuador General Rengifo was expected to return to this country about the first of September, 1899; but the said counsel, Messrs. Carlisle and Johnson, being now informed that General Rengifo has already gone from Bogotá to Quito in Ecuador to take charge of his diplomatic post, and that he will not return to this country, which fact they have only learned within the last two days.

It is hereby stipulated and agreed that the counsel for the defendants admit that Messrs. Carlisle and Johnson never gave any advice whatsoever to Mr. Manuel H. Pena on the subject of his resignation from the Arbitration Commission; nor did they, or either of them, advise him, the said Manuel H. Pena,

on any other subject; and that Mr. Pena never asked any advice of them, the said Carlisle and Johnson, or either of them.

Further: That in July, 1897, the said Carlisle and Johnson advised both Rengifo, the diplomatic representative of Colombia in the United States, and Cisneros, the agent and attorney of Colombia before the commission, that the resignation of said Manuel H. Pena would be an unwise and improper step, and that they never gave any different advice to any person whomsoever.

That General Julio Rengifo, the diplomatic representative of Colombia at Washington [would], if accessible as a witness would testify as follows: That he was always opposed to the (1675) resignation of Pena and the retirement of Cisneros, and opposed such action not only in July of 1897, but on the night of October 21, 1897.

That before the 19th of October, 1897, the said Carlisle and Johnson advised said Rengifo that if the arbitrators included in their award items not properly within the terms of submission of January 4, 1897, the award could and would be set aside by proceedings in a court of equity; and said Carlisle and Johnson were actually retained before October 19th, 1897, by said Rengifo as counsel for the Republic of Colombia for that purpose, in case such an invalid award should actually be rendered.

That said Rengifo learned of the award on Friday night, October 22, 1897, after ten o'clock P. M., and informed Carlisle and Johnson thereof in the forenoon of October 23, 1897. That those gentlemen, by telegraph and telephone, communicated with the said Cisneros during the day of October 23, 1897, and left Washington on said night for New York, arriving there on Sunday morning, October 24th.

That the firm of Carlisle and Johnson being retained as aforesaid to institute the necessary proceedings, Calderon Carlisle, of said firm, was expressly authorized in writing by said Rengifo to sign his name to the cablegram or cablegrams to the Colombian Government which it might be necessary to send jointly with Mr. Cisneros from New York, and on the 24th of October, 1897, a cablegram, embodying the advice of Messrs. Carlisle and Johnson, already accepted by the said General Rengifo before they left Washington, and on that day accepted by Mr. Cisneros, was sent to Colombia. The same being Exhibit No. 2, filed by complainant this 12th day of September, 1899.

That said General Rengifo is out of the United States and has been since the month of April last, and though he intended and expected to return to the United States on or about August 1st, 1899, he was in the interval appointed Minister to Ecuador, (1676) and will not be able to return to the United States for an indefinite period, if at all.

That from prior to January 4, 1897, to January, 1899, the said General Julio Rengifo was the only diplomatic representative of the Republic of Colombia in the United States of America.

That neither the [firm] of Carlisle and Johnson, nor either member were or was ever counsel for Colombia before the Cauca railroad arbitration of January 4, 1897.

Counsel for defence object that the foregoing facts are irrelevant, immaterial, incompetent, and not within the issues.

Sept. 12, 1899.

CALDERON CARLISLE,
W. G. JOHNSON,
Counsel for Complainant.
COWEN, CROSS & BOND,
EDW'D H. MURPHY,
JOHN W. BEAUMONT,
Counsel for Defendants.

Counsel for complainant here give notice that the testimony of the complainant is closed; and it is agreed between counsel for complainant and counsel for defendants that should the notary and stenographer not be able to complete the depositions and have them in Clarksburg, West Virginia, by or before the 15th of September, that he shall do the same with all due diligence, and the depositions when filed by him, will be considered as having been filed in time.

I do further certify that the foregoing is a full, true, exact and accurate transcription thereof, and that the exhibits hereto attached and marked "Exhibits Colombia, Nos. 1 to 17, both inclusive, and the translations thereof are the identical exhibits and all the exhibits which were offered in evidence by any of the parties.

I further certify that the witness, Arthur W. Fergusson, (1677) having left the city of New York before his deposition had been transcribed into typewriting, I was unable to secure his signature to the same.

I further certify that I am not interested in the said cause or the result thereof, and am not of counsel for any of the parties to the same.

I further certify that my fee for taking the said depositions, amounting to $40.00, has been paid to me by the complainant, the Republic of Colombia.

In testimony whereof I have hereunto set my hand and notarial seal this 14th day of September, A. D. 1899.

EDWARD C. MANNERS,
[Notarial Seal.] Notary Public, New York County.

(10-cent U. S. Revenue Stamp, Canceled.)

Executive Office,
Western Union Telegraph Company,
New York, Sept. 11th, '99.

Messrs. CARLISLE AND JOHNSON,
Messrs. COWEN, CROSS AND BOND,
New York City:

Dear Sirs,—Referring to your inquiry regarding the production of certain cable messages sent in October, 1897, I beg to say that such messages are not preserved beyond a year from their date, and that in accordance with our practice all messages of October, 1897, were some time ago destroyed, and cannot be produced in court. We are likewise unable to submit copies of them.

Yours truly, THOS. F. CLARK,
Vice-President.

(Copy, Ex. Colombia No. 1, Sept. 12, '99.)

(1678) New York, October 24, 1897.

To the Secretary of the Treasury, Bogotá:

After careful examination of the minutes of the commission, including the pretended award, Messrs. Carlisle and Johnson, both present in New York, advise that a proceeding be instituted in the name of the Government of Colombia against the Cauca Company in the Federal courts to declare the nullity of the pretended award and to prevent the Cauca Company from making use of said award against the Government. This proceeding is authorized by the laws of the United States for the purpose of declaring null an award on the ground that it is *ultra vires* or based on fraud, or a grave mistake (clear equivocation) of fact or law. This step will forestall (prevent) any influence of the interested party in the State Department here. It will make the matter public in order that public opinion may work in our favor. It will avoid the diplomatic intervention which the company has promised itself, and it will preserve the private character of the convention of the 4th of January between the Government and the company.

We are of opinion that the plan proposed is prudent and necessary, and for this reason we have employed counsel (juris consults) and ordered the preparation of documents for the purpose. It is urgent that the Government should authorize Rengifo by cable immediately to file the suit in the name of the Government, since in order to be efficacious it is necessary that the action be started without delay and for legal effects the express authorization of the Government to Rengifo is indispensable on receipt of this.

RENGIFO,
CISNEROS.

(Copy of Translation of Ex. Colombia, No. 2. Sept. 12, 1899.)

(1679) [Translation of Exhibit No. 3 appears in deposition of Mr. Fergusson.]

Bogotá, July 5, 1897.

Minister of Colombia,

New York:

Should commission condemn Government to pay losses Cauca railroad for things other than expenses of construction the Government will not accept the award as openly violative clearest agreement January fourth. Communicate to Cisneros so as to notify commission.

ESGUERRA.

(Copy translation of Ex. Colombia, No. 4. Sept. 12, '99.)

Received at Washington, D. C., Oct. 27, 1897.

Bogotá, October 26, 1897.

Minister Colombia,

Washington, D. C.:

I authorize you to enter against Cauca Company in name of Government before Federal courts of that country, which inspire full confidence, suit to nullify pretended award of incomplete arbitration commission Cherry matter.

GOMEZ.

(Copy translation of Ex. Colombia No. 5. Sept. 12, '99.)

Bogotá, December 9, 1897.

General Don Julio Rengifo, M.,

Charge d'Affaires ad interim of Colombia in Washington:

To-day I address the Minister of the Treasury the communication which I here insert:

"With the present I have the honor to transmit to Y. E.
(1680) a copy of the note which, on November 4 last, was addressed by this department to General Don Julio Rengifo, M., Charge d'Affaires ad interim of Colombia in Washington, giving an account of the interviews which took place between the said diplomatic agent and Messrs. Carlisle and Johnson with regard to the award made by the commissioner of the *Cauca Company* and the umpire, declaring themselves a majority of the commission charged with investigating and deciding the matter pending between that company and the Colombian Government; interviews which resulted in an agreement to submit the weighing of the said award to the Federal courts of the United States. The copy referred to also comprises that of the documents received with the said note. In the latter, furthermore, information as to the arrangements with the lawyers entrusted with the

legal steps on the part of the Republic and of the necessity of providing funds in the consulate at New York for the expenses which the matter requires is given; with respect to which the Treasury Department has to-day resolved it being a matter exclusively within its jurisdiction.

"In order to act promptly, and with the desire to avoid prejudicial delays, this Ministry ordered the said Consulate to cover the first expenses in the premises; but the fact is that the said offices has numerous expenses to make, and its receipts are not sufficient now to meet all of them."

The department under my charge recognizes that in this emergency, Your Excellency has proceeded with the skill and discretion you always employ in behalf of the national interests placed in your care.

I improve the opportunity to repeat myself, with sentiments of distinguished consideration.

Your Excellency's obedient servant,

ANTONIO GOMEZ RESTREPO.

(Copy translation of Ex. Colombia No. 6. Sept. 12, '99.)
(1681)

Republic of Colombia. Executive Power. Number 293. Ministry of Public Works. Section 1. Bureau of Engineering.

Bogotá, June 11, 1891.

Senor Don Victor Mallarino,
Attorney in Fact of Mr. James L. Cherry, Present:

There has been received in this office the memorial which you sent under date of the 7th instant in your capacity as attorney in fact of the concessionary of the Cauca railroad work.

In reply I say to you that in order to facilitate for the contractor, Mr. J. Cherry, the transportation of the materials necessary for continuing the construction of the railroad from Cordoba, and so that he may be at once in a position to give the work all possible impetus, he is granted authority to give to the line between Cordoba and Juntas the width of three feet between rails, on condition that he remains bound to change the line, giving it the width of one meter so soon as the Government may require it. The proposed modifications of the contract to give the whole line a width of three feet in lieu of one meter will be the subject of subsequent negotiations, in case there is offered in exchange for this concession a just and equitable compensation, the proposed reduction of five hundred pesos ($500) in the price of construction per kilometer being deemed unacceptable.

God preserve you.

CARLOS URIBE.

Ministry of the Treasury.
Bogota, June 8, 1899.

It is a faithful copy taken from the respective copy book of official communications of the late Minister of Public Works from 1891 to 1893. Folios 124 and 125.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia No. 7. Sept 12, '99.)
(1682)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, including the archives of the late Ministry of Public Works, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Executive Power. Ministry of Public Works. Number 325. Section 1. Bureau of Engineering.

Bogotá, August 18, 1891.

Senor Don Victor Mallarino, Present:

In reply to the memorial sent by you to this Ministry under date of July 28 last I inform you that under date of the third instant there was dictated the following resolution in the premises:

"In consideration of the reasons set forth by the petitioner in the foregoing memorial, and with the object of facilitating for the enterprise the rapid construction of the Cauca railroad,

It is resolved: That the permission granted the Cauca

(1683) railroad enterprise through resolution of June 11 last, to continue the line with a width of three feet between the rails, will hold good until June 1, 1892; wherefore, the Government binds itself to not order, prior to that date, that the width of three feet be changed to that of one meter, pursuant to the stipulations of the respective contract."

I believe it is not inappropriate to advise you that this resolution will be published in the "Diario Oficial."

God preserve you.

CARLOS URIBE.

Ministry of the Treasury,
Bogotá, June 7, 1899.

It is a faithful copy taken from the respective copy book of official communications of the late Minister of Public Works from 1891 to 1892. Folios 183 and 184.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia, No. 8. Sept. 12, '99.)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Haicenda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, including the archives of the late Ministry of Public Works, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and (1684) caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Executive Power. Ministry of Public Works. Number 443. Section 1. Bureau of Engineering.

Bogotá, February 23, 1892.

Senor Dr. Don Victor Mallarino, Present:

Messrs. Ulpiano Gonzales and Rodolfo Valazco have addressed under date of the 8th instant, the following official communication to this Ministry:

"For the purpose of proceeding with the examination of the accounts of the Cauca railroad enterprise, for which we were commissioned by Y. E., we addressed ourselves through the medium of a letter to the superintendent of the said enterprise, Mr. M. P. Carter, who replied to us in the letter which we annex in the original, in which we are informed that the enterprise has its general accounting office established in New York, and that at this place there only exist largely incomplete data."

Which I transcribe to you for your information and guidance, and I inform you that the letter referred to remains in this office at your disposal.

God preserve you.

CARLOS URIBE.

Ministry of the Treasury,
Bogotá, June 3, 1899.

It is a faithful copy taken from the respective copy book of official communications of the late Minister of Public Works from 1891 to 1892. Folios 391 and 392.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia, No. 9. Sept 12, '99.)

(1685)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is em-

powered to certify copies of original documents in said department, including the archives of the late Ministry of Public Works, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Executive Power. Ministry of Public Works. Number 810. Section 1. Bureau of Engineering.

Bogotá, December 10, 1892.

Senor Don Victor Mallarino, Present:

In view of the petition sent by you to this Ministry under date of September 26, last, in your capacity as general attorney in fact of the Cauca Railroad Company, the most excellent Vice-President of the Republic, charged with the executive power, has been pleased to agree to the concluding of a contract additional to that approved by Law 16, of 1890, in which it shall be stipulated that the Government extends for two years the term for completing and turning over to the public service the first section of the railroad, or that comprised between the (1686) Port of Buenaventura and the city of Cali. With respect to what you solicit in the name of the said company in your memorial dated the 4th instant relating to the introduction into the country of Chinese workmen, the Government also agrees to grant the permission pursuant to the authority granted it by Law 64 of this year. This permission will be granted upon the concluding of the additional contract to which reference has been made, as in one of the clauses thereof the condition under which it will be granted will be stipulated.

God preserve you.

JOSE MANUEL GRENAGA G.

Ministry of the Treasury,
Bogotá, June 6, 1899.

It is a faithful copy taken from the respective copy book of official communications of the late Minister of Public Works from 1891 to 1892. Folios 971 and 972.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia No. 10, Sept 12, 1899.)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature: that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and (1687) caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Executive Power. Ministry of the Treasury. Section 6. Number 41. Bureau of Engineering.

Bogotá, March 26, 1895.

Senor Don Victor Mallarino, Present:

The following resolution, dated the 23rd instant, has been issued pursuant to the memorial sent by you to this office in your capacity as legal representative of Mr. James L. Cherry.

In consideration of the foregoing memorial dated the 15th instant, it is resolved: It having become necessary to carry out the provisions of Article 1 of Law 60 of 1894, the Government, upon dictating the resolution declaring the contract regarding the construction of the Cauca railroad forfeited, will not take immediate possession of the enterprise, and will only assume charge thereof after the tribunal of arbitrators shall have decided the question which may be submitted to their judgment, pursuant to the stipulations of Article 37 of the said contract, which Law 16 of 1890 approved. I transcribe it to you for your information, and as a reply to your said memorial.

God preserve you.

CARLOS URIBE.

Ministry of the Treasury,
Bogotá, June 6, 1899.

It is a faithful copy taken from the respective copy book of official communications of the Ministry of the Treasury from 1895 to 1896. Folio 106.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia No. 11. Sept. 12, '99.)

(1688)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Executive Power. Ministry of the Treasury. Section 6. Number 70. Bureau of Engineering.

Bogotá, April 23, 1895.

Senor Don Victor Mallarino, Present:

As a reply to an official communication addressed by this department to that of the Exchequer, pursuant to the memorial sent by you, the following has been received:

Bogotá, April 20, 1895.

"Mr. Minister of the Treasury, Present:

"In reply to the polite official communication of Y. E., No. 54, dated the 17th instant, I have to say to Y. E. that orders

have been issued to the collectors of customs of the Pacific to the end that they continue paying the warrants issued in favor of the Cauca railroad enterprise."

(1689) Which I have the honor to communicate to you for your information.

God preserve you.

CARLOS URIBE.

Ministry of the Treasury,
Bogotá, June 13, 1899.

It is a faithful copy taken from the respective copy book of official communications of the Ministry of the Treasury from 1895 to 1896. Folio 141.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia No. 12. Sept. 12, '99.)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

(1690)

Republic of Colombia. Executive Power. Ministry of the Treasury. Section 6. Number 139. Bureau of Engineering.

Bogotá, August 27, 1895.

Senor Don Victor Mallarino, Present:

Your polite note of the 12th instant has been received in this office, and together with it two statements of receipts and

disbursements of the Cauca railroad enterprise for the half-year from July 1 to December 31, 1894, and from January 1 to July 1, of the current year. The Government, through Article 21 of the Contract, having reserved the right to appoint, whenever it should deem it necessary, special officers or commissioners to examine the works, the road, or the accounts, this ministry desires to know where the said original accounts are to be found.

God preserve you.

CARLOS URIBE.

Ministry of the Treasury,
Bogotá, June 12, 1899.

It is a faithful copy taken from the respective copy book of official communications of the Ministry of the Treasury from 1895 to 1896. Folio 237.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia No. 13. Sept. 12, '99.)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of (1691) Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Executive Power. Ministry of the Treasury. Section 6. Number 143. Bureau of Engineering.

Bogotá, August 31, 1895.

Senor Don Victor Mallarino, Present:

I acknowledge the receipt of your polite favor of the 30th

instant. The Government having determined to exercise the authority conferred upon it by Article 21 of the Contract of August 27, 1890, "relating to the construction of a railroad from Buenaventura to Manizales," it is hoped that you will be pleased to inform the Ministry of the address of the office in New York where the books of the "Cauca Company" are kept, and the person who should officially furnish the data the commissioner of the Government may need for the examination of the accounts.

God preserve you.

CARLOS URIBE.

Ministry of the Treasury,
Bogotá, June 12, 1899.

It is a faithful copy taken from the respective copy book of official communications of the Ministry of the Treasury from 1895 to 1896. Folio 241.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia, No. 14. Sept. 12, '99.)

(1692)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Ministry of the Treasury. Section 6. Number 191. Bureau of Engineering.

Bogotá, November 8, 1895.

Senor Don Victor Mallarino, Present:

The following resolution has fallen upon the memorial which you sent to this office under yesterday's date:

In view of the foregoing memorial and considering—

1. That Senor Don Victor Mallarino, in his capacity as legal representative of Mr. James L. Cherry, advises that on the 2d instant the said Mr. Cherry should have left New York for the purpose of settling in an equitable manner the point of which Article 2 of the Executive Resolution which declared forfeited the contract relating to the construction of the Cauca railroad, treats;

2. That the Government is disposed to recognize the rights (1693) that he may have, pursuant to the contract of the ex-concessionary of the enterprise in interest, to which end the Government believes it necessary to treat directly with the said Mr. Cherry, seeing that his attorney in fact has no conclusive instructions in the premises.

It is resolved to extend for forty days, reckoned from the 16th instant, the term established by Article 2 of the before mentioned resolution, in order that Mr. Cherry may exercise the right granted him by Article 37 of the forfeited contract, pursuant to which he may request the appointment of an arbitration tribunal and make the nominations that correspond to him on his part. Communicate it to whom it may concern and publish it with the memorial upon which it is based.

I transcribe the foregoing resolution to you for your information and other pertinent purposes.

God preserve you.

CARLOS URIBE.

Ministry of the Treasury,
Bogotá, June 10, 1899.

It is a faithful copy taken from the respective copy book of official communications of the Ministry of the Treasury from 1895 to 1896. Folios 312 and 313.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia, No. 15. Sept. 12, '99.)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended (1694) to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,

[Seal of Legation.] Secretary of the Colombian Legation.

Republic of Colombia. Ministry of the Treasury. Section 6. Number 420. Bureau of Engineering.

Bogotá, November 17, 1896.

Mr. JAMES L. CHERRY, Present:

I take pleasure in communicating to you that the Government has named as expert on its part, for the arbitration tribunal of which Article 37 of the Contract of 1890 speaks, Senor Dr. Don Anibal Galindo, who will enter upon his duties as soon as may be necessary. As in a recent note from H. E. the Minister of the United States in this city addressed to H. E. the Minister of Foreign Relations, a copy of which I have received, it is stated that you will in a few days absent yourself from the territory of the Republic, I take the liberty of stating to you that although the Government is willing to continue dealing directly with you in this matter, if you prefer to continue it through a representative, the latter should be, "according to Article 35 of the Contract, invested with sufficient power to deal with the Government in everything relating to the contract," and therefore, and very especially, to compromise and (1695) bind, since Senor Mallarino, who figured as your representative in this city, has not this indispensable authority.

Your very obedient servant,

(Signed) RUPERTO FERREIRA.

Ministry of the Treasury,
Bogotá, June 19, 1899.

It is a faithful copy taken from the respective copy book of official communications. Folios Nos. 278 and 279.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia, No. 16. Sept. 12, '99.)

I, Luis Cuervo Marquez, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the Legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

(1696)

Republic of Colombia. Ministry of the Treasury. Section 6. Number 432. Bureau of Engineering.

Bogotá, November 27, 1896.

Mr. James L. Cherry, Present:

It having been learned in this ministry that you and Mr. Schramme, the expert appointed by the Cauca Company, will shortly leave the country, I deem it advisable to call your very especial attention to the fact that if through this reason the constituting of the tribunal, so many times requested by you, and to which Article 37 of the contract approved by Law 16 of 1890, refers, is rendered difficult or impossible, the Government is in nowise responsible for such failure. As well by the provisions of the article cited, as by the obligation con-

tracted pursuant to the resolution of January 23 last, which you accepted in all its parts, the constituting of the tribunal should be proceeded with if, as has happened, a friendly settlement is not reached. Without declaring finally that this is impossible, the Government on its part has complied with the duty of naming the arbitrator to represent it, as was opportunely communicated to you. There is, therefore, no difficulty of any kind for the constituting of the arbitration tribunal, and for its fulfilling the special functions assigned to it by Article 37 of the contract.

Your very obedient servant,

RUPERTO FERREIRA.

Ministry of the Treasury,
Bogotá, June 20, 1899.

It is a faithful copy taken from the respective copy book of official communications. Folios 305 and 306.

ALEJANDRO M. OLIVARES,
Chief of Section 6.

[Seal of the Ministry of the Treasury, Section 6.]

(Copy translation of Ex. Colombia, No. 17. Sept. 12, '99.)

(1697) I, Luis Cuervo Marques, Secretary of the Legation of the Republic of Colombia to the United States of America, in charge of the office, archives and seal of the legation, in the absence of the Minister of the said Republic of Colombia to the United States, Don Climaco Calderon, hereby certify that the signature of Alejandro M. Olivares, Chief of Section Six, Ministry of Hacienda of the Republic of Colombia, appended to the above certificate is his true and genuine signature; that the said Alejandro M. Olivares was during the whole of the month of June, 1899, Chief of Section Six of the Ministry of Hacienda of the Republic of Colombia, and as such he is empowered to certify copies of original documents in said department, including the archives of the late Ministry of Public Works, and his act in that behalf is entitled to full faith and credit.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Colombian Legation at Washington to be affixed this 12 day of September, 1899.

LUIS CUERVO MARQUEZ,
[Seal of Legation.] Secretary of the Colombian Legation.

(1698)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants. } In Equity.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County and State of New York, } *ss:*

Be it remembered, that on Friday, October 20, 1899, at 11 o'clock A. M., under the stipulation of counsel for complainant defendants in a certain cause pending in the Circuit Court of the United States for the District of West Virginia, wherein the Republic of Colombia is complainant and The Cauca Company and The Colombian Construction and Improvement Company are defendants, before me, a notary public, in and for the county of Kings, State of New York, my certificate being on file in New York county, appeared at No. 280 Broadway, in said city, the following persons: Messrs. Calderon Carlisle and William G. Johnson, counsel for complainant; Messrs. E. J. D. Cross, John W. Beaumont and Edward H. Murphy, of counsel for defendants; Mr. Christian F. Schramme and the witness, Lewis M. Haupt.

And thereupon the taking of testimony under the stipulations of counsel began, the said stipulations being hereunto annexed, and being as follows, to wit:

(1699)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

The Republic of Colombia, Complainant,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, Defendants. } InE quity.

Stipulation.

It is hereby stipulated and agreed by and between the complainant and defendants in the above entitled cause, through their respective counsel and solicitors, that the testimony in behalf of defendants, of such witnesses as may then be produced, be taken at the office of Edward H. Murphy, Esq., No. 280 Broadway, New York, in the State of New York, commencing

at 11 o'clock A. M., on the 20th day of October, 1899, and proceeding from day to day until completed, before a notary public and stenographer, to be agreed upon by the counsel of the complainant and defendants; and the examination and cross-examination of said witnesses may be conducted orally and taken down stenographically and transcribed into typewriting by the said notary and stenographer, Sidney C. Ormsby, and when so transcribed shall be by him returned, sealed up, together with all documents and exhibits which may be put in evidence, and by him sent to the clerk of this court at Clarksburg, West Virginia; and when so transmitted the same shall be received in evidence subject only to such objections as may be noted at the time of taking the testimony, which objections shall be duly entered by the stenographer at the time and place in the depositions when made.

It is further stipulated that the taking of testimony shall not begin earlier than eleven o'clock A. M. on any day, nor extend later than six P. M. on any day, except by agreement of counsel for all parties.

It is further agreed that the signatures of the witnesses to their depositions shall be taken by the stenographer and (1700) notary to the typewritten transcription of their testimony.

If, for any reason, the signature of any witness cannot be obtained, the notary and stenographer may add to the deposition of said witness the signature of such witness and the reason why the signature could not be obtained.

October 20, 1899.

COWEN, CROSS & BOND,
JOHN W. BEAUMONT,
(Signed) EW'D H. MURPHY,
Solrs. for Defts.
CALDERON CARLISLE,
WM. G. JOHNSON,
Counsel for Complainant.

And thereupon, the taking of depositions was proceeded with from day to day, as hereinafter set forth, witnesses being called by counsel for the defendants and being by me first duly sworn to tell the truth, the whole truth and nothing but the truth in response to such questions as might be propounded to them by counsel for the respective parties; and, in answer to questions propounded by counsel for complainant and defendants, testified as hereinafter full and verbatum set forth, to wit:

Lewis M. Haupt, being produced as a witness of lawful age for and on behalf of the defendants, and being first duly

sworn to tell the truth, the whole truth and nothing but the truth, did depose and say as follows:

DIRECT EXAMINATION.

By Mr. Cross.

Q. Professor Haupt, will you kindly state what is your residence and occupation? A. My residence is 107 north 35th street, city of Philadelphia, Pennsylvania, and my occupation is that of a consulting engineer.

Q. How long have you been a consulting engineer? A. I have been doing consulting work for some twenty-five years (1701) and civil engineering prior to that for a period of nearly 40 years in all.

Q. Please state what positions you have occupied during this last period which you have mentioned. A. Limiting it to last period of forty years?

Q. Yes. A. The principal occupations of my career have been as a government engineer on the geodetic work on Lake Superior, the Great Lakes surveys for two years, subsequently as an examiner in the United States Patent Office; after that for twenty years as professor of civil engineering at the University of Pennsylvania, and during that time as assistant to the coast survey in charge of the geodesy of Pennsylvania, as well as assistant in the 4th Lighthouse District for the improvement of the Delaware river. Subsequent to my resigning from the university, I have done considerable engineering and consulting work, including work for the government on the Nicaragua Canal Commission, of which I was a member, and I am at present a member of the Isthmian Canal Commission, and was also the chairman of the Arbitration Commission for the determination of the questions arising between the Colombian Government and the Cauca Company.

Q. By whom were you appointed a member of the Isthmian Commission, and when? A. I was appointed by the President, Mr. McKinley.

Q. At what time did the President appoint you on the Isthmian Commission? A. Sometime in May or June, I don't remember the month exactly, but this year.

Q. You were appointed a member of the commission constituted by what is known as the Convention of January 4th, 1897, between the Colombian Government and the Cauca Company and The Colombian Construction and Improvement Company, were you not? A. I was.

Q. You were appointed by the concurrent action of the Secretary of the United States, Mr. John Sherman, and the diplomatic representative of the Colombian Government, Gen. Rengifo, were you not? A. Yes, sir.

(1702) Q. That commission of which you were a member met where? A. We met in New York city, No. 30 Broad street, the Johnson building.

Q. It commenced its sessions on or about the third of April, 1897, did it not? A. Yes, sir.

Q. And held a number of sessions down to the 22d day of October? A. Yes, sir.

Q. The session on that date was the 35th session, I think, from the book here? A. There were two sessions held on the latter date, I think, which were numbered 35 and 36. The general statement is correct otherwise.

Q. In the 20th section of the bill of complaint filed by the Republic of Colombia in this cause, on page 13 of the bill, it is stated that "the said Haupt (meaning yourself) in violation of his duty impartially and fairly to consider and decide, as required by the agreement creating the said commission, the matters in controversy submitted to it by the parties thereto, before the various matters in behalf of the parties in interest had been completely presented and without considering or examining the views presented for his examination and consideration by this complainant, but wholly disregarding the same, did, on the 12th day of October, 1897, promulgate a certain projected scheme of decision or award, and submitted the same to the said commission as a basis for final action, and the said Haupt (meaning yourself), in further disregard of his duty to this complainant, as a member of said commission, subsequently attempted to suppress from the minutes of such proceedings a part of said projected decision or award after the same had been discussed and considered by the whole commission and directed the secretary of said commission to expunge from the record of its proceedings, the said part of said projected decision or award for the purpose and with the object of misrepresenting the true course of procedure of the said commission and particularly of the conduct of the said Haupt and the said Christian F. S. (1703) Schramme." Will you kindly state whether the charges in the bill of complaint so made are correct or not? If you say they are not correct, will you kindly state what did actually take place?

Mr. Johnson. The question is objected to as leading.

A. The statement made in this paragraph 20 is incorrect, inasmuch as it imputes a motive to the commission which was foreign to it. What did happen at this meeting after the close of the testimony was the presentation by the chairman of a plan of procedure which was simply a collation of notes which had been taken during the entire proceedings for the purpose of expediting the deliberations and conclusions of the commission, and it was merely intended to serve as a guide to the commis-

sion in proceeding systematically and orderly with the discussion of the various items arising under the convention. There was no attempt to suppress from the record any part for the purpose of concealment. The first portion of the so-called schedule was a portion relating to the scope of the convention and the rest, as I have just stated, was merely a programme of proceeding for deliberation, which it did not seem to me would necessarily be involved in the record of the proceedings of the commission as such. Ordinarily I understand it is the practice to keep a record of such deliberations, but in order that everything might be accessible to any one, and especially to Mr. Pena, it was the opinion of the chairman (myself) that he should have the benefit of everything that was said being placed in writing.

Q. What was the last date upon which the commission sat when there were three members of the same; that is, Mr. Pena, yourself and Mr. Schramme? A. I shall have to look at the records to refresh my memory as to dates. (After consulting record.) The 35th session, I see, Mr. Schramme and myself only were present. At the 34th session I note from reference to the minutes that the three commissioners were present, and that meeting was held on the 19th of October at 11 o'clock in (1704) the morning, the next session being the 35th, held October 22d, when Mr. Pena was absent.

Q. Please state what you know of the circumstances causing his absence? A. At the close of the preceeding session, the 34th, the commission had deliberated upon all the items which were considered worthy of consideration, the chairman having reserved his judgment in regard to certain items of interest for final decision, and it was then proposed to have a final meeting to make the announcement and to formulate the award. When we met on the morning of the 22d for this purpose I was personally very much surprised indeed to be presented by the secretary, Mr. Miller, with the correspondence between himself and Mr. Cisneros and Mr. Pena, in which it was alleged that the autonomy of the commission had been destroyed by the withdrawal of Mr. Pena. We, as I say, were surprised at this, because there had been an effort on the part of the Colombian commissioner to withdraw during the entire proceedings and there had been correspondence with his government on that question, and he had been advised, as I understood from cablegrams shown, not to withdraw, and that the Colombian Government would hold itself responsible for the result in case of the award being anything which it did not consider proper. On the spur of the moment, therefore, I started to indict a letter to the honorable Secretary of State of the United States, placing before him the conditions which confronted us, and as the dictation of that letter proceeded it oc-

curred to me, that, after all, the Secretary of State was not a party to the controversy, had no jurisdiction whatever, and could have nothing to say in the premises; and in the meantime it was also, I believe, thought by Mr. Schramme that he wanted to take the advice of his counsel, so that he suggested sending for Mr. Stine, and I accorded him the privilege. Mr. Stine subsequently appeared, we explained to him the situation and what I was about doing, writing this letter, and he thought it was injudicious and agreed with me that the Secretary of
(1705) State had nothing to do with the matter whatever; so I directed the stenographer, Mr. Miller, to destroy the letter, which was partially finished, but not to destroy the minutes, as alleged in the record. On further consultation with Mr. Stine, it was thought that we had better adjourn; and, to confirm the thoughts which were in my mind at the time, I merely asked him as to the propriety of it, because I make no claim to knowing the legal points, and we thought that we had better adjourn and notify Mr. Pena, and give him an opportunity to attend the meeting of the commission, I not feeling that the autonomy of the commission was destroyed by this act, but that it was merely a personal and voluntary act on his own part, perhaps arbitrary, and that there was not time to comply with the conditions of the convention and notify the Government to appoint a successor, because only seven days remained before the limitation of our time expired. That was, as nearly as I can recall, the detail of what took place at the morning session. On adjourning that session we asked Mr. Miller to notify Mr. Cisneros and also Mr. Pena that we proposed to adjourn until a stated hour in the afternoon, I think it was two o'clock, if I remember rightly, and requested their presence; and on meeting at that hour, Mr. Pena not being present, Mr. Miller stated that he had been unable to communicate with Mr. Cisneros. We, however, called up the attorney, Mr. Robertson, and found that Mr. Pena was at his office, and I communicated with him over the telephone, stating that this meeting had been adjourned for the purpose of having him present, and he replied that he did not consider himself a member of the commission, and, under the circumstances, begged to be excused from attending. I then notified him that we would have to proceed in his absence, which we did. We then proceeded to formulate the award, which was the only thing remaining to be done in order to complete the work of the commission.

Q. Counsel for complainant, in the 20th paragraph, also
(1706) said, "That the said Haupt subsequently attempted to suppress from the minutes of said proceedings a part of said projected decision or award after the same had been discussed or considered by the whole commission." Will you kindly state whether or not such is the fact?

Mr. Johnson. That is objected to as leading.

A. It is not a fact in the language as stated. It is a fact that I requested the secretary, or stated to the secretary, that it was unnecessary to publish the latter part of my project submitted for the formulation of the business of the commission; that is to say, the outlines which I had prepared for the guidance of the deliberations of the commission as to the way in which the items should be considered as being numbered.

Q. Please state whether or not any document or paper was destroyed or suppressed except the proposed letter to the Secretary of State of the United States. A. There was nothing destroyed or suppressed excepting that to my knowledge.

Q. You have stated that, prior to this last meeting, all the matters and things in connection with the award had been discussed and determined upon. Will you kindly state briefly what these matters and things were which had been discussed and determined upon prior to this meeting on the 22d of October, 1897, and prior to the receipt of the letters from Mr. Pena, and in doing so you can refer to the testimony taken before the commission which now lies before you and state this in your own way. A. If I catch the meaning of the question, it is to itemize the various points which were under discussion, and I think that can be more fully set forth by reference to all the sessions of the commission from the 30th to the 35th, but the items in general were the value of the railroad, the amount paid for the concession by the company to Mr. Cherry, items of interest, the amounts of money raised by bonds and by stock and the com-
(1707) pensation of the officers of the company. Those were the principal items as I recall them.

Q. The minutes of the commission show in detail these matters? A. They do; yes, sir; and everything that was said with reference to them. The arguments on both sides are of record.

Q. You have stated that, after you had notified your commissioner, Mr. Pena, of your presence at the place designated and he did not come, you proceeded to formulate the award, as you have expressed it. Kindly state whether or not this award is the one which is given with the bill of complaint on page 60? A. Exhibit No. 16, entitled "Pretended award of Lewis M. Haupt and Christian F. Schramme," is the document referred to.

Q. That is addressed to the Republic of Colombia and the Honorable John Sherman, Secretary of State of the United States, and the Cauca Company? A. It is.

Q. State whether or not a copy of this award was sent to these parties? A. To the best of my knowledge it was mailed to the Secretary of State and to all the parties.

Q. Kindly state who assisted you in the formulation of

this award; and, if you state you had any assistance in such formulation, kindly state when? A. Mr. Louis Marshall was called in to assist the commission in the legal formulation of this award, because it was a matter which neither of the commissioners felt capable of doing, and because we felt that, under the circumstances, we ought to have some disinterested outside advice on the presentation of the award.

Q. Who was Mr. Marshall? A. He was a lawyer in the Johnson building, I believe, in the city of New York.

Q. What was his firm, if any? I don't know the *firm's* name, sir.

Q. Was it Guggenheimer, Untermyer & Marshall? A. That I am unable to say; I only met Mr. Marshall personally and not the firm.

Q. Kindly state whether or not the questions involved (1708) under the convention were argued before the commission by counsel, and, if so, who were counsel in the cause? A. They were: Counsel in the cause for the Cauca Company was Marcus Stine, for the Colombian Government, Mr. Francisco J. Cisneros, and Mr. Roderick Robertson, of New York city, as associate counsel, and everything was fully argued, I believe.

Q. It was a fact, was it not, that the arguments of counsel were printed? A. It was; yes, sir; everything.

Q. State whether or not these arguments were part of the record or should have been? A. They formed a part of the minutes.

Q. On page 907 of the minutes of proceedings (it should be 907, as it follows immediately page 906, but the figures are not on the top of the page) there appears the following: "I have signed all the foregoing minutes of proceedings from the first to the 34th session, both inclusive, covering the proceedings during my membership of the commission. I have done this simply as an attestation of the correctness of the report of the proceedings, but not in approval of the proceedings themselves, which I protest has been carried by the majority beyond the lawful scope of the convention, and are for that reason without jurisdiction and void." Then there is a blank space and the printed words "Commissioner for the Government," and I believe I am correct in saying that in the court copy above these words "Commissioner for the Government" appears the signature of Mr. Pena; and in the volume which I hold in my hand there is a typewritten slip containing the following:

"This was the contention throughout the proceedings and the representatives of the Government proposed for this very reason to withdraw at the 9th session (p. 176, Vol. 1), but subsequently and after receiving a cable from the Government continued to attend.

"This conclusion of the commissioner from Colombia is

therefore his individual opinion, and is not in accord with the (1709) stipulation of the commission adopted at its second session (vide p. 11, Vol. 1) that 'all differences of opinion shall be settled by a majority of votes, and that such decision shall be final.'

"The majority having reached a conclusion does not recognize the propriety of their co-commissioner's retirement at this juncture and under these circumstances as long as it does not affect the findings of this commission.

(Signed) "LEWIS M. HAUPT, Chairman;
"C. F. SCHRAMME."

Kindly state how, when and by whom and for what reason this typewritten memorandum has been inserted in this volume of the testimony? A. To the best of my recollection, this was prepared and inserted by Mr. Schramme and myself at the last session of the commission.

Q. State whether or not this should not constitute a part of the record to the same extent and effect as the memorandum of the withdrawing commissioner? A. It was inserted for that purpose as it was deemed expedient to explain the situation as stated by Mr. Pena.

Q. Kindly look at page 792 of that record and immediately subsequent thereto there are four pages which contain certain cablegrams between the President of the Republic of Colombia and the counsel for the Republic. State whether or not these cablegrams were not ruled out of the case by the unanimous action of the commission. A. I have examined the cablegrams referred to, and would state that they were distinctly ruled out of the minutes on the ground that the Government was not a party to the convention, having delegated its functions to its commissioner.

Q. State whether or not at the same time this action was taken the testimony given by Mr. Schramme was not also excluded? A. It was also excluded. I am not sure that it was (1710) done at the same time; it may have been done subsequently.

Q. On the page following 792 of the exhibit testimony before the commission, there is this typewritten slip inserted, which is signed by yourself and Mr. Schramme (pp. 1 to 14 inc.):

"Ruled out against objection of counsel for the Government and should not have been printed as part of the record (see page 792 of minutes).

"Furthermore, it was subsequently agreed by both parties that these cablegrams in Mr. Schramme's testimony relative to the scope of the convention should not form part of the record."

Please state whether or not that statement is a fact? A. That is correct.

Q. Can you say when this little typewritten slip was inserted? A. That was inserted at the same time as the other, at the last meeting after we had reviewed all the proceedings and found it was omitted.

Q. At this last meeting, I think Mr. Miller, who was the secretary, testified that he was requested to withdraw. Will you kindly state whether or not this statement is correct, and if it is correct kindly state why he was requested to withdraw? A. It was not at the last meeting, but at the morning meeting, which was the one before the last, that Mr. Miller was requested to withdraw. It seemed to the chairman that the situation was so critical and the interests involved were so large that Mr. Schramme, who desired the opportunity to confer with his counsel, should have it, and when Mr. Stine reported at the office Mr. Miller was requested to withdraw, as he was the private secretary of Mr. Cisnoros, and the conference of course had nothing to do with the operations of the commission; it was simply to give Mr. Schramme an opportunity to confer with his counsel privately.

Q. Professor, will you kindly state when it was determined (1711) by the commission to allow the two items of interest? A. It was determined at the final meeting; that is, the chairman announced the decision. That was the only question which was held in reserve. It had been fully argued, and I desired to give the Colombian Government the benefit of that item if I could find any justification for doing so, but I wished a little more time to look up the question.

Q. State whether or not Mr. Pena was present when this item was presented and discussed? A. He was; yes, sir.

Q. You stated it was held over for your consideration? A. It was simply held over to give me an opportunity to see if I could, under any of the arguments presented, find grounds for rejecting it.

Q. Please state whether or not at any period during your sessions under the authority given you to determine the proceedings, which was the authority mentioned in the convention, you determined how questions which should arise before the commission should be settled? A. Does the question mean whether I had reached a definite conclusion?

Q. No; how the commission should determine the questions brought before it, by vote or how? A. The convention itself provided for that, that every subject matter properly before it should be determined by votes of the members of the commission, and the commission itself had decided that the majority should decide finally.

Q. State whether or not this does not appear on the pro-

ceedings before the commission? A. It does, I think, at the second meeting; I am not sure as to the date.

Q. State whether or not, according to your recollection, Mr. Pena assented or dissented therefrom? A. He assented thereto, and I think the proposition came from the Colombian side of the commission.

By Mr. Carlisle. Q. That is the proposition to determine all questions by a majority vote? A. I think so; I am not quite sure about that.

(1712) By Mr. Cross. Q. Will you kindly look at page 799, the word "company," in the third line from the top; the collocation is: "Solely to ascertain what the company had expended in carrying on the operations of constructing the Ferro Carril del Cauca, for which the company has agreed to reimburse or indemnify it." Please state if the word "company" is not a typographical error there? A. Yes, sir; I have made the correction there on the margin, and it should be the word "government."

Q. Now, on page 911 there is the statement by the secretary, which I will ask you to read:

"Mr. Stine, counsel for the company, then instructed the secretary to tear up the short hand notes of the meeting, and the chairman confirmed such instructions. The secretary destroyed the same, Mr. Stine disposing of the fragments. The chairman stated that the meeting was null and void." Please state whether or not such statement is correct; that is, that you declared the meeting null and void? A. That statement is incorrect. The statement of the destruction of the letter is substantially correct, but not in those words.

Q. This is the letter referred to by you to the Secretary of State? A. Yes, sir.

Q. Then there is this typewritten insertion opposite page 910:

"This statement (p. 11-12) is apparently evolved from the secretary's memory. It is not based upon any notes or minutes taken at the time, and it is not a correct statement of what occurred. The statement that 'the chairman stated that such meeing was null and void' is not a fact. The chairman had partially dictated a proposed letter to the Hon. Secretary of State. Upon consideration and consultation with Mr. Stine, counsel for the company, it was concluded that the proposed letter was inopportune, as the subject matter of the same was not then before the Department of State, and therefore null and void. This statement does not therefore form part of the minutes (1713) (vide pp. 1003 *et seq.*)" signed by yourself as chairman and by Mr. Schramme, the other member of the commission. State whether or not this insertion was made by you and Mr. Schramme at this place, and, if so, what were your reasons

[for] doing so? A. It was correct, that the insertions were made by us jointly, as witnessed by our signatures and inserted at that place for the purpose of correcting the false impression which the secretary's statement would leave as we thought upon the mind of a reader.

By Mr. Beaumont. Q. When was it made? A. At the last session.

Q. And it was embodied in the record? A. It was embodied in the record at the time.

By Mr. Cross. Q. On page 1057, Vol. III. of the record, Complainant's Exhibit No. 21, there appears a letter addressed by the secretary of the commission to yourself as chairman. Please state when such letter was received by you according to your best recollection. A. I would have to refresh my memory by reference to the record. (After referring.) It was received Wednesday, November 3rd, at 11 A. M., at the Army building, New York.

Q. If you care to make any explanation of this matter you can do so. A. I haven't read the substance of it for some time, but I will look over it. (After referring.) In explanation of this letter which I have just hastily re-read, I desire to state that Mr. Miller met me at the door of the Army building as I was departing to catch a train for Philadelphia, with two printed copies of the minutes, which he wished me to attach my signature to, as he stated that I think Mr. Cisneros or some one expected to sail for Europe in a few days and would like to have these authorized copies. I said to him I had not read the copies, and did not know whether they were correct representations, but upon his assurance that they were correct and faithful statements of the fact, I signed one of them upon the register in the hall before leaving, not having time to read it, (1714) and took the other with me, which I read on my way to Philadelphia in the train, and then discovered that so much coloring had been placed upon that session that I wrote him the letter to which this is a reply.

CROSS-EXAMINATION.

By Mr. Johnson, counsel for complainant.

Q. Prof. Haupt, in one of the first questions asked you by Judge Cross in your direct examination, he referred to a convention of January 4, 1897, between the Republic of Colombia, The Cauca Company and The Colombian Construction and Improvement Company. Is not that an inadvertence? The Colombian Construction and Improvement Company was not a party to that convention, was it? A. I do not remember that I mentioned all three of those parties.

Q. No; but Judge Cross did in his question. A. I didn't pay much attention to that part of it, Mr. Johnson.

Q. That was an error then? A. In answer to your question, I would say that, as the record shows, the Colombian Construction Company did not appear as a party in the title, but as a party in fact.

Q. Is it not a fact that the Colombian Construction and Improvement Company was nowhere mentioned in the convention under which you and the other two arbitrators assumed to act? A. That is true; yes, sir.

Q. You state that on the day of the last proceedings of the commission, the 22nd day of October, Mr. Miller, the secretary of the commission, was requested to withdraw, and that the reason of that was because of a private conference between Mr. Schramme and Mr. Stine, his counsel, and that he was not excluded from any official assemblage or proceedings of the members of the commission. Is that correct? A. That is correct, sir. We had practically taken a recess. We were demoralized, as it were, by the resignation of Mr. Pena.

Q. What you wish to be understood as saying is that what-
(1715) ever took place during Mr. Miller's exclusion from the room was the private and personal conduct of Mr. Schramme and his counsel, and was no proceedings on the part of the commission as such? A. That is correct; yes, sir.

Q. Now, is it a fact that Mr. Miller was permitted to be present and was actually present at all the official meetings and actions of the members of the commission? A. He was; yes, sir.

Q. And was that also the fact when the meetings consisted simply of Mr. Schramme and yourself after Mr. Pena had retired? A. Yes, sir; that was the fact.

Q. Was Mr. Louis Marshall a personal acquaintance of yours? A. No, sir.

Q. Where was his office, with reference to Mr. Stine's? A. I do not know the number of his office; he had an office in the Johnson building with Mr. Stine, but I do not know whether he was a member of any firm connected with Mr. Stine or not.

Q. Who recommended him to you? A. There were several names mentioned. We felt that it was necessary to have some disinterested, or supposed to be disinterested, counsel, and Mr. Marshall's name was mentioned. I think Mr. Harmon was mentioned. I am not very good about remembering names of strangers to me, and so I paid no attention to it.

By Mr. Cross. Q. Wasn't it Judge Hoadley? A. I couldn't say whether it was or not. Perhaps it was.

By Mr. Johnson. Q. Who did the mentioning? A. I think the suggestion came from Mr. Stine.

Q. In the course of your examination, Judge Cross has called your attention to several typewritten slips signed by yourself and Mr. Schramme, which you have identified as

memoranda, which you and he had signed as correct representations of the matters therein mentioned. Did you ever deliver those typewritten memoranda to Mr. Miller? A. I did not personally, and I do not know whether he ever received copies (1716) of them. They were notes which I had made on the margin of my own copy substantially.

Q. You mean your own copy of the minutes of the proceedings. A. Yes, sir.

Q. The printed minutes? A. Yes, sir; after they were written out.

Q. And then after conferring with Mr. Schramme they were written out in the form in which they now appear? A. Yes, sir.

Q. Do you recall seeing the explanatory memorandum signed by Mr. Pena referring to his signing the preceding minutes? A. In type?

Q. In any form? A. Yes, sir; I saw it in print.

Q. Had you any knowledge of the existence of any such memorandum by Mr. Pena until you saw it in print? A. I can't say that I had.

Q. Now you stated that Mr. Miller presented to you printed copies of the minutes as you were leaving the Army building to catch a train and asked you to sign the same, which you did, upon his representation that they were correct. Were those minutes in print? A. Yes, sir.

Q. Do you recall that at the last meeting on the 22nd of October, 1897, the afternoon meeting, Mr. Miller was handed a typewritten memorandum of the minutes of that proceeding? A. I do; yes, sir.

Q. Do you know who prepared that? They were prepared by Mr. Schramme prior to the meeting, and written out and handed to Mr. Miller as being the representation of what took place.

Q. Do you recall who handed them to Mr. Miller? A. No, sir; I do not. Mr. Schramme was trying to read them; I remember that.

Q. Well, they appear in print in the proceedings, do they not? A. They do; yes, sir.

Q. You have looked over these minutes since they have been printed, have you not? A. I have; yes, sir.

(1717) Q. Do you recall whether or not Mr. Schramme's testimony appears in print in these proceedings? A. My recollection is that it does appear. It was not expunged, as many other matters which were ordered to be omitted were put in; everything was put in.

Q. How long after the adjournment of the last meeting on the afternoon of the 22nd was it that the award was actually signed? A. I think it was the same day—on the same evening.

Q. Yes; but I mean how long as matter of minutes or hours after the adjournment? A. I can't say positively whether the award was signed before or immediately after the adjournment.

Q. Now, all these typewritten memoranda which you have identified were made after you had examined the minutes in print? A. Yes, sir.

Q. Do you remember where they were printed? A. The minutes?

Q. Yes, sir. A. No, sir; that was exclusively under the jurisdiction or charge of Mr. Miller, the secretary; I don't know who did the printing.

Q. Were they printed at the office of C. G. Burgoyne, Walker and Centre streets, New York? A. I presume the record is correct, but I have no knowledge of who printed them. Mr. Miller attended to all the work of printing and revising them.

Q. What is your best recollection as to the hour in the evening of the 22nd when you had finally completed all the business including the execution of the award itself? A. My judgment is that it must have been in the neighborhood of 5:15 or 5:30; I think I caught the six o'clock train. We were very anxious to close everything that day, as I was about to depart for Nicaragua and wanted to close the business up entirely on that day.

Q. Can you tell us what day or how many days after that it was that Mr. Miller met you at the Army building and pre-
(1718) sented the printed copies of the minutes for you to sign? A. The meeting that I referred to in my testimony was prior. Perhaps I am mistaken about it, but if I remember rightly we had other copies of the minutes which had not been signed at previous sessions which were handed us to sign, and those were signed at a subsequent date. Mr. Schramme signed his, I think, in the office, and I signed some in Mr. Miller's presence. He had slips inserted at the end of each meeting where the signatures were to be placed, and they were signed in Mr. Miller's presence and I think that was subsequent to the award.

Q. I think you misunderstand my question. You have stated that Mr. Miller met you in the Army building as you were about leaving to catch a train, and presented to you printed copies of the minutes for signature, which you signed in the hallway, resting it on the radiator for the purpose, and hurried on to catch your train. That is correct, is it? A. That is correct, yes.

Q. And subsequently you examined that print? A. Yes, sir.

Q. It did not accord with your recollection and under-

standing in every particular of what had taken place, and you made one of the typewritten memoranda which have been exhibited here in evidence with reference to what you considered the inaccuracies in that report. That is correct? A. Yes; that is correct.

Q. Now, referring to the incident of signing the minutes in the Army building while on the radiator, I want you to state as nearly as you can how many days that was after the 22nd of October? A. I think I shall have to consult the records, sir, to give you the date.

Q. Well, can you approximate it? A. I cannot, for the reason that I was making a great many trips, sometimes almost daily, between Philadelphia and New York.

Q. Let me see if I can aid your recollection. The 22nd of (1719) October was on a Friday: Was it in the following week? A. Yes, sir; I think so.

Q. It was after Sunday? A. It was after Sunday, I think, and it may have been on Monday. I think I remember Mr. Miller stating that Mr. Cisneros wanted to leave on Wednesday, and if it was that week, of course it may have been Monday or Tuesday.

Q. Now, these typewritten memoranda which Judge Cross has exhibited to you and which you have identified in giving your testimony, are the only corrections in the minutes as printed which you saw occasion to make; is that correct? A. Yes, sir.

Q. In other respects, they correctly represent what took place before the commissioners according to *you* recollection? A. They do.

Q. Mr. Haupt, you are not a lawyer, I believe? A. I am not; no, sir.

Q. Mr. Cisneros was not a lawyer, either, was he? A. He was called an attorney, but his principal business was that of a civil and consulting engineer.

Q. Well, he was the agent of the Government? A. Yes.

Q. And the lawyer on the case on his side was Mr. Robertson? A. Yes, sir.

Q. And Mr. Schramme was not a lawyer? A. No, sir.

Q. Nor was Mr. Pena? A. No, sir.

Q. And the counsel on the Cauca Company's side was Mr. Stine? A. That is correct?

Q. And he was a lawyer? A. He was a lawyer.

RE-DIRECT.

By Mr. Cross.

Q. You have stated that Mr. Miller was present at all the meetings of the commission subsequent to Mr. Pena's withdrawing? A. Yes, sir.

Q. Please state whether or not it was considered advisable (1720) and proper that Mr. Miller should attend at the consultation of the remaining arbitrators when they were drafting the text of their award? A. It was not considered necessary or proper that Mr. Miller should be present in the preparation of the final award.

Q. Kindly state whether or not you had not made up your mind or come to a conclusion on the question of interest prior to the withdrawal of Mr. Pena and had held the announcement of it for the meeting which was to be held when he handed in his resignation.

Mr. Johnson. That is objected to as leading.

A. I had made up my mind, as that was the purpose of that meeting, and we had met for the purpose of receiving the announcement of the chairman and concluding the business. It was expected to be the final meeting.

Q. State whether or not the decision on this item had not been practically arrived at prior to the last meeting?

Mr. Johnson. Objected to as leading.

A. It had.

Q. Both items? A. Both items for interest.

Q. Now, the typewritten notes which have been referred to as a correction of the errors of the secretary, and which have been testified to, you stated were made in your own record. Please state whether or not they were made in other copies of the record besides your own? A. My original annotations were on the margin of my own record, and then they were referred to Mr. Schramme, and the substance of them was written out in typewriting and inserted in the only copy which I think we had.

Q. State whether or not this was the official record of the commission as verified by yourself and co-commissioner? A. It was; yes, sir.

RE-CROSS-EXAMINATION.

By Mr. Johnson.

Q. A copy of the minutes containing the memoranda from (1721) which Judge Cross read, though, is not your copy, is it? A. That is not my copy; no, sir.

Q. Do you know whose it is? A. It is a copy of the counsel for the Cauca Company, I believe.

Q. But the memoranda which he read are the same that are in your copy and Mr. Schramme's, are they not? A. They are; yes, sir.

By Mr. Cross. Q. In making these corrections and in-

serting them in the copies of the record to which you had access, state whether or not it was your intention that these corrections should appear in these copies as official copies of the commission? A. It was; yes, sir.

By Mr. Johnson. They were intended to be official corrections? A. They were intended to be official corrections and I supposed copies would be sent to all the parties *inested*.

(Signed) LEWIS M. HAUPT.

Attest:

SIDNEY C. ORMSBY,
Notary Public,
Kings County, N. Y.

Certificate on file in N. Y. Co.

Defendants' counsel announce that they close their testimony in said cause.

And I hereby further certify that I did correctly take down stenographically and accurately transcribe into typewriting all the testimony, verbatim, of the witness, Lewis M. Haupt, examined before me as notary public, under the above stipulation of counsel, together with all the proceedings of counsel therein, which testimony and proceedings are fully and accurately set forth above as they in fact actually took place.

And I further certify that I am not of counsel for any of the parties in this litigation and not interested in the proceedings or the result thereof, and that my fee for taking the said (1722) deposition, amounting to $32.80 has been paid by the defendant.

Given under my hand and notarial seal this 3d day of November, 1899.

SIDNEY C. ORMSBY,
Notary Public,
[SEAL] Kings County, New York.

Certificate on file in N. Y. Co.

OPINION.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1723) DISTRICT OF WEST VIRGINIA.

The Republic of Columbia,
vs.
The Cauca Company and the Colombian Construction and Improvement Company, } In Equity.

GOFF, Circuit Judge:

This is a suit in equity instituted by the Republic of Colombia against the Cauca Company and the Colombian Construction and Improvement Company, two corporations organized under the laws of the State of West Virginia. The purpose of the bill is to obtain a decree directing the cancelation of an award made by two of three arbitrators, acting under a certain agreement of arbitration dated January 4, 1897, between the complainant and the Cauca Company, one of the defendants, the object of which was to obtain a settlement of all the differences then existing between the Republic of Colombia and the Cauca Company, in connection with the contract for the construction of the Cauca Railway. The award was returned October 22, 1897, signed by two of the three arbitrators named in the submission, and was in favor of the Cauca Company for the sum of four hundred and fifty-two thousand forty-eight dollars and ninety-three cents ($452,048.93) in gold coin of the United States, to be paid by the complainant to the Cauca Company on January 26, 1898, in addition to the sum of two hundred thousand dollars ($200,000 00) previously paid (1724) on account. The complainant insists that the award is invalid because, it was made by but two of the three arbitrators; because it comprehends the allowance of items which were never considered at any time by all three of the members of the Commission acting together; because the arbitrators acted in excess of their powers, in that they considered and made their award as to matters not committed to their judgment by the articles of submission; for other reasons alleged in the bill, but not relied on in the argument, and consequently they will not be specially referred to.

The defendants duly filed their answer to said bill, to which exceptions on account of impertinence were taken and disposed of. A cross bill was tendered by defendants and filed by leave of court, praying for a discovery as to certain matters referred to in the original bill as well as

to transactions connected with the agreement of submission and the proceedings of the Commission at its sessions held thereunder, and also for a decree for the specific performance by the Republic of Colombia of the agreement of January 4, 1897, and for the payment of the award before mentioned; and that the said Republic of Colombia be required to designate an attorney in fact within the jurisdiction of this court, with authority to accept service of such process or orders as may be found necessary for the exercise of the jurisdiction of the court. The cross bill was answered, issue joined, testimony taken and the case regularly submitted after argument by counsel. The record is most voluminous, the pleadings, exhibits and testimony making several large printed volumes, and it would be a discourtesy of which this court will not be guily, if mention were not made of the fact that the briefs of counsel and their oral arguments, while able and eloquent, by far exceed the record in size as well as in interest. I have given the testimony careful study, for the decision of the case depends more on the proper finding of the facts than on the determination of the (1725) law. The former is not easy of solution, may be involved in doubt, but the propositions of law to be disposed of and applied, are, I think, well established, even elementary in character.

First, the question of jurisdiction is to be disposed of, The Republic of Colombia is a foreign state, within the meaning of those words as used in the Constitution of the United States, and as such it has the right to maintain a suit in this court against any party found within this district, concerning any subject-matter of which this court has jurisdiction. The Sapphire, 11 Wall. 164. The defendants were found and served with process within the jurisdiction of this court, they have appeared and answered and they have filed their cross-bill, which has been answered by the sole defendant thereto, the complainant in the original bill. That courts of equity have jurisdiction of bills the object of which is to set aside awards, and decree the same to be void, is too well settled by numerous decisions to admit of doubt. 2 Story's Eq. Jur., Secs. 1451, 1462; 2 Pom. Eq. Jur., Sec. 919; Burchell *v.* Marsh, 17 How., 349.

Before proceeding to consider the validity of the award, it will be well to state the facts relating to the controversy for the settlement of which the arbitration was entered into: On August 27, 1890, James L. Cherry, a citizen of the United States, entered into a written contract with the complainant to construct and operate a steam railway in Colombia, between Buenaventura, on the Pacific coast, and Manizales, by way of Cali. This line of railway was to be

constructed and opened to traffic, as far as the city of Cali, within four years from the date of said contract, unless prevented by fortuitous circumstances, or *vis major*. This contract was approved by the Congress of Colombia, by an act known as Law 16, 1890. Upon that part of the road to be completed within four years, complainant guaranteed interest to Cherry on the basis of five per cent. per annum, for eighteen years, on the sum of $38,000 American gold (1726) for each kilometre. A portion of the line had been built previous to this contract with Cherry, which was by it assigned to him, together with the rolling stock thereon and the building relatings thereto. Upon this portion of the road the guaranteed interest of five per cent. was to be paid on the basis of $8,000 per kilometre. This interest was secured to Cherry by one-half of the gross revenues of the Colombian custom houses on the Pacific coast. The term of the concession was seventy years, at the end of which period the railway was to become the property of of the Republic of Colombia. As security on his part Cherry was to deposit in New York with complainant's depositary $50,000 in American gold, before October 27, 1890, which was to be returned to him when a portion of the road equal in value to the $200,000 was constructed. Complainant was to furnish military protection to the employees and the property of Cherry without cost to him, and he was given the right to use wood, stone and other material from the government lands required for railroad construction. He had the right to assign the contract to any individual or company of a private nature, but not to any government or foreign nation, but notice of such assignment was to be given to the Republic of Colombia. Troops, employees and material of the government were to be carried over the railway at half rates. Cherry was to have his domicile in any city in Europe or America, selected by him for that purpose, but if he should not select Bogota, he was to keep in this city an agent vested with authority to deal with the government concerning all matters relating to said contract. It was further provided that if, for any reason, the government should declare the concession to be forfeited, that Cherry should have the right to submit the matter to the decision of two experts, one to be appointed by the government and the other by Cherry, and such experts were to appoint an umpire in the case of disagreement, and the decision of the arbitrators or of the (1727) umpire was to be final and unappealable. On November 29, 1890, Cherry assigned his interest in the contract to the two defendants, the Cauca Company, which was organized to operate the road, and the Colombian

Construction and Improvement Company, organized to construct it. The complainant was notified of the assignment, and thereafter recognized the Cauca Company as such assignee.

The defendant, the Cauca Company, began the construction of the road in due time. It purchased rails, locomotives, supplies and other necessary material for the construction and operation of the railway. The work progressed, but was not completed within the four years stipulated for in the contract. The complainant insisted that the failure to complete was because of the default and mismanagement of the defendant, the Cauca Company, while said Company claimed that it was because of the improper conduct of the Government of the Republic of Colombia, and also because of *vis major*. On the 10th day of December, 1892, the Minister of Public Works of Colombia and the attorney of the Cauca Railroad Company entered into a written agreement by which the time for the completion of the first section of the road was extended for two years. On the 16th of November, 1894, the Colombian Congress passed an act, the first section of which reads as follows: "The Government will proceed to decree lapsed the contract of 27th of August, 1890, referring to the construction of the railroad from Buenaventura to Manizales, inasmuch as Congress does not approve of the contract 98 of 1892, carried out between the Minister of Public Works and Mr. Victor Mallarino, general representative of the Cauca Railroad Company, which deals with the extension of time for the construction of said railroad." This act also authorized the complainant to assume possession of the road and to continue its construction. The defendant, the Cauca Company, as a matter of fact, still continued in possession of the part of the road that was completed, and proceeded with the construction of other portions thereof. (1728) Said Company protesting to the complainant as to the act of forfeiture mentioned, demanded the formation of a tribunal of arbitration, as provided for in the original contract. Several efforts were made by the parties to adjust the difficulties so existing, but without success, when the matter was brought to the attention of the Secretary of State of the United States, who in May, 1895, advised the Minister representing the United States at the capital of the Republic of Colombia that the action of said Republic in regard to the forfeiture of the concession held by the Cauca Company appeared to be a cause for diplomatic interference, and directed him to so inform the complainant. In October, 1895, the Republic of Columbia directed that Cherry should appear at Bogota within thirty days, for the

purpose of proceeding with the arbitration, and advised that in default of his so doing that all rights claimed by defendants under the contract would be forfeited.

The Secretary of State of the United States again communicated with the Minister of that Government, residing in the Republic of Colombia, instructing him in substance to render assistance to the defendant in the negotiations relating to said difficulties, and to obtain an extension of thirty days in order that Cherry, who was then in the United States, might be able to reach Bogota. This extension was asked for by said Minister and was granted by complainant. In December, 1895, Mr. Cherry and Mr. Schramme, as representatives of the Cauca Company, arrived in Bogota, and proceeded with the negotiations looking to a settlement of the controversy, the complainant being represented by its executive and other officers. No result was reached, and the subject was postponed until such time as the Congress of the Republic of Colombia could convene and consider the matter, each party in the meantime to retain such rights as they held under the original contract. The Congress of the Republic of Colombia convened and passed on October 20, 1896, Law 41, authorizing the Government to enter into an agreement with the (1729) Cauca Company, having in view the equitable adjustment of the then existing troubles.

This act contained among other provisions the following: "In any event the condition of the friendly settlement shall be the renunciation on the part of the grantee, or his representatives, of the franchise granted, and the consequent and immediate delivery of the railroad and all its fixed and rolling stock, buildings, tools and other appurtenances."

Various propositions and counter propositions of adjustment were offered, but no conclusion was reached, and finally on January 4, 1897, the agreement was entered into under which the award mentioned was made.

In Article 1, of the submission, complainant and the Cauca Company compromise and settle all pending differences in connection with the contract approved by Law 16, of the year 1890, regarding the construction of the railway mentioned.

In Article 2, the company surrenders absolutely the concession, and agrees to deliver to complainant within fifteen days the railway, plant and rolling stock. In exchange complainant agrees to pay the Cauca Company a "just indemnity for the works and labors which the company may have executed during the time in which the enterprise has been in its charge." And also to pay for rolling stock, etc.

In Article 3, the parties agreed that the indemnity should be a sum equal to what "the company shall prove to have expended on the labors and works executed by it in the construction of the railway."

In Article 4, provision was made for special Commission to fix the indemnity, to be composed of three members, one to be chosen by complainant, one by the Cauca Company, and the third by the Secretary of State of the United States and complainant's minister at Washington, acting jointly.

In Article 5, the Commission was given authority to (1730) fix the indemnity and to appraise the structure, works, labors and materials. In order to reach a proper indemnity it was to examine the books and accounts of the company at New York, and the documents that complainant and the company might present in support of their claims, and such as the Commission might demand. Commission was to inspect the railway, examine witnesses, appoint experts if necessary, and fix the time within which the parties might make their proofs. It was also to determine the procedure to be followed in the exercise of the powers conferred upon it, including its own acts as well as the procedure of the parties themselves.

In Article 6, it was set forth that if either of the Commissioners resigned, or declined, or should for any reason cease to act, that the proceedings of the Commission should not thereby be invalidated, but the vacancy was to be filled by a new appointment to be made within thirty days, by the party whose Commisoner failed to act. If such party failed to so appoint, then it was provided that the Secretary of State of the United States and the complainant's minister at Washington acting together should fill the vacancy.

In Article 7, the parties were authorized to appear before the Commission either in person, by attorney in fact or by agents.

In Article 8, the time allowed for the Commission to make and file its award was fixed at one hundred and fifty days, counting from its first meeting, but an extension of sixty days was provided for in case of justifiable delay.

In Article 9, it was agreed that the award should be final and without appeal.

In Article 10, it was stated that the complainant, calculating that the company had invested about $200,000 in the construction of the railway (the company claiming much more), pays in advance to the company $200,000 in gold, on account of the indemnity to be thereafter awarded (1731) by the Commission, this being done so as to secure

immediate possession of the railroad by complainant. It was also stated that in case of an award for more than $200,000 the complainant was to pay the excess in such manner as should be determined by the Commission.

In Article 11, provision was made for turning the railway and property over to such person as may be designated by complainant, and for the taking of an invoice that should clearly set forth the condition of everything delivered.

In Article 12, the expenses of the Commission are provided for and directions are given that the award shall find whether one or both parties shall pay the same.

In Article 13, the discharge and release of the parties was provided for, upon performance of the arbitration, and the extinguishment of the original concession was arranged for.

In Article 14, it was agreed that the parties to the submission should select their Commissioners within eight days after the ratification of the agreement.

In Article 15, provision was made for the ratification of the submission by the Vice-President of the Republic of Colombia.

Under this agreement the complainant appointed Manuel H. Pena, and the Cauca Company, Christian F. Schramme, as their respective Commissioners, and the Secretary of State of the United States and complainant's minister at Washington selected Lewis M. Haupt, a civil engineer, as a third Commissioner. On the 3d day of April, 1897, the Commission so constituted met in the city of New York, duly organized, and chose as their chairman the said Lewis M. Haupt. The complainant was represented before the Commission by Francisco J. Cisneros as attorney, Roderick Robertson as counsel, while the Cauca Company had as attorney Marcus Stine. The Commission decided at its second meeting, held April 27, 1897, that all of its decisions soould be by majority vote of the members, and at its third session it was resolved that, in case of dis-
(1732) agreement between the members of the Commission, the chairman should decide the question at issue. The sessions of the Commission were duly held at stated times, much testimony was taken and many witnesses examined, a number of them being expert Spanish lawyers and literary men, as to the true meaning of the words relating to the scope of the Commission and the extent of the submission.

The books of the Cauca Company were offered, explained, referred to experts for examination and report and subsequently considered by the Commission. During the

twenty-seventh session, held on August 30, 1897, the Commission finding that it could not complete its work within the limit of one hundred and fifty days, unanimously resolved to extend the time for sixty days additional. At its thirtieth session, held on October 12, 1897, the Commission commenced the consideration of the testimony—oral arguments and briefs of counsel having been made and filed—for the purpose of formulating its award. An allowance of $233,909.14 was made by the Commission unanimously, as the cost of the physical construction of the road; the sum of $108,181.42 was awarded by a vote of two to one, as due on account of the salaries of the executive officers of the company to the 26th of January, 1897; the sum of $135,000, was awarded, by a vote of two to one, as the cost to the company of the original concession; the sum of $13,643.33, was allowed, by a like vote, as interest on the cost of concession; the sum of $29,385.88, was, by a like vote, allowed as traveling expenses of the officers of the company in connection with the business thereof; the sum of $29,200.00, was awarded, by a like vote, as reimbursements to the company, for a portion of the extra compensation paid its officers for extra trips to Bogota; the amount of $16,605.10 was allowed on account of expenses of the company at its New York office; the sum of $5,122.48 was also allowed, by a like vote, on account of incidental expenses. At the meeting of the Commission held (1733) on October 19, 1897, it was moved to award the company as interest on the cost of physical construction to January 26, 1897, the sum of $48,668.18, and the questions relating thereto were discussed, but the vote thereon was postponed. At the same meeting a motion was made that the company be allowed the sum of $32,333.40 as the interest on the actual amount paid in by the bondholders of the company. That matter was fully discussed by the members of the Commission, but no vote was taken, and further action thereon was postponed. This meeting was the thirty-fourth of the Commission, and all the members of the same were present, as they had been at all previous meetings; all the members had heard the testimony and the arguments, and all had taken part in the discussion and deliberations relating thereto, as is disclosed by reading the ten hundred and fifty-eight printed pages of their proceedings.

The thirty-fifth session of the Commission was held on October 22, 1897, at which meeting Mr. Pena, the member designated by the complainant, did not appear, but he caused to be presented to the Commission at its said session a communication dated October 22, 1897, of which the

following is a copy of the translation thereof, the original having been written in the Spanish language:

"To His Excellency the Minister of Hacienda, Bogota, Republic of Columbia:

"In view of the fact that Lewis M. Haupt and Christian F. Schramme, both appointed as members of the Commission created pursuant to the convention of January 4, 1897, to decide the controversy between the Cauca Company and the Republic of Colombia relative to the Cauca Railway, have declared their intention to allow to the Cauca company very large amounts of money for alleged expenditures of the company having no relation to either the construction expenses of the company or the purchase of material on the construction of said Cauca Railway or for use thereon, and whereas the said Commission has not and (1734) never had jurisdiction to pass upon or allow such expenditures; and whereas, in my judgment, said Commissioners have departed from the terms of said convention and propose to act in the matter of said controversy in a manner wholly beyond their official power as such Commissioners and to make an award upon matters which the parties to said controversy never intended to submit to their decision; and, whereas, under the said circumstances I am convinced that it is my solemn duty to refuse to act further with such Commissioners and to decline to remain a member of such Commission until the illegal intentions of said Commissioners shall have been carried out, by the making on their part of a pretended award upon matters not submitted to said Commission.

"I therefore beg to say that I hereby resign as a member of said Commission, such resignation to take effect at the moment of my signature hereto.

"Dated at the city of New York, this 22nd day of October, 1897."

This copy of the letter of resignation was enclosed in a communication from Mr. Pena to the Secretary of the Commission, and at the same time there was presented to said Commission a letter, of which the following is a copy:

"NEW YORK, Oct. 22, 1897.

"Messrs. LEWIS M. HAUPT and CHRISTIAN F. SCHRAMME:

"GENTLEMEN,—Being informed by Mr. Manuel H. Pena that he has resigned his office of Commissioner in the matter of the arbitration of the controversy between the Cauca Company and the Republic of Colombia, I desire on behalf of the said Republic of Colombia, to say that

such resignation on the part of Mr. Pena has destroyed the autonomy of the Commissisn of which you and he were members, and that under such circumstances no further act can have any force or effect as an official act on behalf of such Commission or as an official act of a Commissioner in said matter.

"Yours very faithfully,

"F. J. CISNEROS."

(1735) The following resolution was then passed by the votes of the remaining two Commissioners, viz.: "Whereas, by the terms of the Convention pursuant to which this Commission was created, it is provided in the eighth article thereof that, 'In order to carry into execution the proceedings fixed by this agreement, and to render its decision, the Commission shall meet in the place or places elected by it, and for such purpose shall have one hundred and fifty days counting from the installation, which may be extended sixty days more in case justifiable grounds of delay shall arise;' and, whereas, this Commission met and organized on the 3rd day of April, 1897, pursuant to the provisions of article fifteenth of said Commission, and has since that time heard the proofs and allegations on behalf of the respective parties to the said convention, and has been attended by the attorneys and counsel for the respective parties, and has heard and considered their arguments, both oral and printed, and all of the members of this Commission appointed by the said convention having participaed in all of the said meetings which have heretofore been held; and whereas, the time fixed by the said article eighth for the rendition of the decision of this Commission has been extended in pursuance with the provisions of said article eighth, and the said extended time will expire on the 31st day of October, 1897; and whereas, all of the members of the said Commission have deliberated with respect to all of the matters submitted to it, and a conclusion was reached by the members of this Commission with respect to all said matters prior to this date, but such conclusion not as yet been formally announced; and whereas, the attempt on the part of Senor Manuel H. Pena to resign from his position as a member of this Cmmission, and his refusal to act as a member thereof at this time and under the aforesaid circumstances, and the concurrence in his action by the attorney for the Republic of Colombia, indicate that it will be impracticable to procure the appointment of another (1736) commissioner in place of the said Pena, in the event that his attempted resignation is of any effect, so as

to enable this Commission to render a decision within the time required by the aforesaid eighth article; and whereas, by article fifth of said convention it is provided that the said Commission shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves, and pursuant to said provisions it was unanimously determined by this Commission, with the concurrence of the attorney for the Republic of Colombia and of the attorney for the Cauca Company, that all decisions to be rendered by this Commission and all differences of opinion should be settled by a majority vote, and that such decision should be final; and whereas, the said Commission is now ready to make its formal decision, the terms of which were discussed between the various members of the said Commission, including the said Pena; and whereas, the said Pena has been requested to attend at this meeting and to participate in the deliberations of the Commission, and has failed and refused to attend thereat; *Resolved*, That this Commission proceed forthwith to make its award, and to formulate its decision as to the matters involved in the said convention."

The following award was then made and announced:

"To the Republic of Colombia,
"The Honorable John Sherman,
"Secretary of State of the United States,
"and the Cauca Company.

"The Commission appointed under the convention of January 4, 1897, which convention was entered into between the Republic of Colombia and the Cauca Company, having been duly organized on April 3, 1897, by all of the members appointed thereto, to-wit: Lewis M. Haupt, C. E., Manuel H. Pena, C. E., and Christian F. Schramme—and having had numerous sessions thereafter, at all of which the (1737) several members appointed to the said Commission were present and participated in the proceedings taken before said commission; and the said commission and the aforesaid several members thereof having examined the books of the Cauca Company with great care; and having heard all the witness produced by the Republic of Columbia and the Cauca Company, respectively; and having considered the arguments, both oral and written, and the various documents submitted for the consideration of the said Commission; and all of the said Commissioners having united in deliberating with respect to the matters submitted to it pursuant to the terms of the said Convention; and the undersigned, constituting a majority of the said Com-

missioners, having reached the conclusion that the Cauca Company is entitled to be awarded the sum of four hundred and fifty-two thousand and forty-eight and 93-100 dollars ($452,048.93) in gold coin of the United States of America, in payment of its claim against the Republic of Colombia, which claim is the subject of the aforesaid convention; now, therefore, we, the undersigned Commissioners, constituting a majority of the aforesaid Commission, pursuant to the authority vested in the said Commission under the terms of the aforesaid convention, hereby find that the Cauca Company is entitled to receive from the Government of Colombia, on account of the matters referred to in said Convention, including the money already paid by the Republic of Colombia to the said Cauca Company, the sum of six hundred and fifty-two thousand and forty-eight and 93-100 dollars ($652,048.93), in gold coin of the United States of America, of which sum the said Republic of Colombia has heretofore paid the said Cauca Company the sum of two hundred thousand dollars ($200,000), leaving due and unpaid to the Cauca Company the sum of four hundred and fifty-two thousand and forty-eight and 93-100 dollars ($452,048.93) in gold coin of the United States of America. (1738) which sum we hereby award to the said Cauca Company, and which sum is to be paid by the Republic of Colombia to the said Cauca Company in the city of New York on the 26th day of January, 1898.

"The Republic of Colombia is also to pay, as a special allowance as part of the costs incident to the said Commission, to attorney Marcus Stine, representing the Cauca Company, the sum of ten thousand dollars ($10,000) in gold coin of the United States of America, on the 26th day of January, 1898.

"In witness whereof, we have hereunto set our hands and seals this twenty-second day of October in the year one thousand, eight hundred and ninety-seven.

"LEWIS M. HAUPT, [Seal.]
Chairman.

"C. F. SCHRAMME." [Seal.]

On the said 22nd of October, 1897, after the award had been acknowledged before a notary public, the chairman declared an adjournment *sine die*.

It is this award, made under the circumstances described, that the complainant prays may be decreed to be void.

Is the award defective because only signed by two of the three arbitrators? Was it the intention of the parties to

the convention that there should be no award, and that the settlement should not be accomplished, unless all three of the Commissioners agreed to and signed the finding? Was not the Commissioners selected by the Secretary of State of the United States, and the Minister resident of the Republic of Colombia, intended to be an umpire, to cast the deciding vote and determine all matters of difference between the Commissioness selected by the parties to the convention? It seems to me that such was the intention. If it was otherwise, surely the language selected was peculiarly unfortunate. A unanimous decision was not required in express words, and in a case of this character it should not be implied. It was certainly the wish of the parties that the (1739) arbitration should be conclusive, effective and final. The Cauca Company, in consideration of the submission, surrendered the railway and the property connected therewith to the Republic of Colombia, and the latter, in order to secure such possession, paid $200,000 in cash, and agreed to pay such further sum as the Commission should award, it being conceded that there should be no appeal from the result. The Commissioners selected by the parties to the agreement were avowedly favorable to the contentions of those respectively designating them, but the third member, Mr. Haupt, was disinterested and impartial. Under such circumstances unanimity of action was hardly possible and could not reasonably have been expected. Such seems to have been the construction placed upon the agreement by the representatives of the parties thereto, for early in their sessions they concluded that a majority vote should govern their conclusions and determine the result of their labers. While as a general rule when submission is made to a given number of arbitrators and no express authority is given that a smaller number may decide, an award will be void unless made by all, still there are exceptions, and if it can fairly be inferred from the manner of the submission and all the circumstances attending it, that all were not required to join in the finding, the result will be sustained. In addition to the circumstances referred to, it was set forth in the agreement that the Commission should determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves. The Commissioners determined that a majority vote should govern their proceedings,—and all parties assented to this by their acquiesence through the frequent sessions of the Commission, held during a period of over two hundred days. It follows that I reach the conclusion that the award of two of the Commissioners was valid, it appearing that

all three were present at all meetings of the Commission (1740) when business was transacted, participating in its proceedings and voting upon the motions and questions arising and decided, except the last one. Therefore had Commissioner Pena not tendered his resignation, and had he been present at the session when the award was made, and then have entered his dissent, still under the circumstances the award would have been binding on the parties, unless some other good cause could have been shown to render it void. In addition to this, I think that the submission was in the nature of a public contention, that the compromise and adjustment of the same through the medium of the Commissioners was based on a public law, an act of the Congress of the Republic of Colombia, and that, therefore, under the well-established rule applicable to such controversies, the decision of the majority will conclude the minority, and their act will be the judgment of the whole number appointed. The dispute was, at least, brought to an issue by an act of the Congress of the Republic of Colombia, by which the franchise of the railway claimed by the Cauca Company was, in effect, forfeited; the submission was evidently the result of the friendly suggestions emanating from the Secretary of State of the United States and conveyed to the Government of the Republic of Colombia through the Minister of the United States residing at Bogota; the third member of the Commission was chosen not by the parties nor by the Commissioners appointed by them, but by the representatives of the Governments of the Republic of Colombia and of the United States; the original concession to Cherry recognized the enterprise he was authorized to carry out to be of public utility, and conceded to him all the rights usual under such circumstances.

In such cases, unless there is a special provision to the contrary, unanimity in reaching a decision is not required of the Commissioners; Coke's Litt., 181a; Gridley *vs.* Barker, 1 Bos. & P., 236; *Ex parte* Rogers, 7 Cow., 526. (1741) But as a matter of fact was not Pena still a member of the Commission when the award was made? Did the mere writing of a letter of resignation, which, so far as the record shows, was never even forwarded to the party by whom he had been appointed, cause a vacancy to exist in the Commission? He could have recalled the resiguation, or the party to whom it was directed could have declined to accept it, in which event he could again have taken his place as a member of the Commission, and in fact he could have done that at any time after the writing of the letter and before its acceptance by the power that appointed

him. Clearly it was not the intention of the parties to the convention that the existence of the Commission should be destroyed by a resignation of the character of that presented by Commissioner Pena. It would be an impeachment of the common honesty of the parties to the agreement, and a travesty on their evidently honorable intentions, to hold that they designed that it should thus be in the power of one man—actuated by, to say the least, not commendable motives—to render worthless the work resulting from the expenditure of thousands of dollars and months of careful research, in an effort to amicably adjust an unfortunate controversy, that was rapidly reaching the point of embarrassment because of its national and diplomatic character. The testimony forces me to the conclusion that Commissioner Pena's only motive in withdrawing from the Commission was to prevent, if possible, a conclusion from being reached, or to render the award invalid, should one be made. This conduct—keeping in view all the circumstances surrounding him and the Commission, of which he was still a member—was not only reprehensible in character, but was fraudulent in its tendencies. He represented the complainant, as did Cisneros, who advised him to pursue the course he did, and while I do not find that the complainant advised such action, still I hold that it would be unconscionable to allow the party, whose agents thus deported themselves, to effect-
(1742) uate by the decree of a court of equity the wrong intended to be accomplished by such improper conduct.

If the award, which had virtually been agreed upon before Commissiener Pena withdrew, was composed of items not included in the submission, then he should have entered his dissent, and have relied upon the proper tribunal, the assistance of which would have been easily obtained, for the purpose of declaring the invalidity of the finding.

This brings us to the consideration of the scope of the submission, and to the charge that the award includes items not contemplated by the convention. The presumption is in favor of the award, and to avoid it the party complaining must clearly show that the authority granted has been exceeded. The ambiguities in the submission were caused by the fact that certain words in it (in the Spanish language) were each susceptible of more than one meaning. Both parties to the agreement offered expert testimony as to the true meaning of said words, argument of counsel was heard and the Commission rendered a decision to the effect that the items included by it in the award were embraced in the terms of the submission. This

question was one for the Commission to decide, and, as the words in controversy were of a foreign tongue and had a technical meaning, the evidence of experts was properly taken. 1 Green Ev., Secs., 277, 280.

Did the Commission err in the construction it gave to the submission, and did it deal with matters which the parties never agreed should be the subject of the award? In construing the submission we must not only look at the agreement itself, but also at what was the obvious intention of the parties, as shown by the circumstances existing when the contract was entered into. The parties clearly intended to adjust all matters of controversy relating to the original concession to Cherry, as well as those growing out of the construction of the Cauca Railway. One side was claiming a sum of money largely exceeding $600,000, while the (1743) other was conceding the sum of $200,000, and offering to arbitrate as to any additional amount; the original concession contemplated its assignment to a foreign company, or individual, and the assignment by Cherry was of record in the proper office in Bogota, the consideration of which assignment is one of the items of the award complained of; the company surrendered the railroad and property connected therewith, and was to have in exchange a *just indemnity* for the works and labors connected with the railway enterprise; the company had absolutely declined a settlement, the basis of which was to be an expert valuation of the actual cost of the physical construction of the railway; the President of the Republic of Colombia had offered to see that $400,000 was paid as a cash settlement of the controversy, and had assured the Minister of the United States residing at Bogota that his desire was that the company should receive back every dollar it had expended.

By the fifth article of the convention, the Commission was authorized to fix the indemnity, *and in addition* it was to appraise the structures, works and materials referred to. To indemnify is to save harmless, to reimburse, to repay any damage sustained. If the Commission in ascertaining the indemnity had been limited to the actual local cost of the railway, why was it necessary to consider the books of the Cauca Company at New York, as also the documents that the Government of Colombia, as well as the Cauca Company, might present in support of their respective claims, and such as the Commission might demand. And would the President of the Republic of Colombia have suggested, in settlement of the controversy, a sum in amount nearly double that of the actual expenditures for physical

construction, about which there seems to have been but slight divergence of opinion, if that matter had been the only one in controversy? I think that the conclusion reached by the Commission, as to the general scope of its powers, was correct, though on several items of one class of the allow-
(1744) ances I am, as will appear hereafter, of the opinion that it was in error. The sum of $233,909.14 was allowed as the cost of physical construction, and as to this item there is no controversy. The amount of $108,181.42 was estimated as a proper allowance on account of the salaries of the officers of the company. This the complainant insists was improper because not included in the submission. For the reasons already stated, I find that this objection is without merit. It was well known to the complainant at the date of the convention that Cherry had assigned his interest in the concession to the Cauca Company, and that said company, organized for the purpose, was then or had been actively engaged in the construction of the railroad. Such companies act only through their officers, usually men of experience and ability, whose services command a compensation in keeping with the character and magnitude of the work. That it was the intention of the parties to the convention that a portion of the indemnity should be on account of such expenses is clear, I think, from the submission itself, as well as from such facts, existing at the time the agreement was signed, as are proper to be considered as explanatory thereof. What that allowance should be was left for the Commission to determine. All of the members heard the evidence and the argument and two of them agreed to the allowance. Before this court can interfere and declare their finding invalid, it must be shown by the evidence that they acted corruptly or that they made a gross mistake, or the same must be apparent on the face of the award. I do not see the gross mistake, nor can I find that they or either of them were improperly influenced or governed by corrupt motives. This allowance may be large, is I think more than this court would have found from the evidence, but it is not so excessive or so outrageous as of itself to constitute conclusive evidence of fraud or corruption. The fact that the award is for a larger sum than the court would have allowed is not alone sufficient cause to
(1745) justify a decree declaring the finding void. Such an allowance is one rather of discretion, based on all the circumstances proper to be considered, and not founded on mere calculation. The parties to the convention left this matter to the honest judgment of the tribunal chosen by them, and this court should not annul the award returned, even if it should think it could have made a fairer one.

Arbitrators are expected to base their decision on the real merits and justice of the controversy submitted to them, and are not required to follow the strict rules of law. The utmost good faith in the discharge of their duties will be presumed and the result reached by them will not be disturbed without clear proof of either corruption, partiality or misconduct.

The amount of $135,000.00 was included in the award as the cost of the Concession. That Clerry necessarily made large expenditures in the negotiations preceding the execution of the original Concession is apparent, and it is not strange that he provided in his assignment that he should not only be reimbursed the same, but also that he should be compensated for the valuable franchise he had secured.

The complainant knew of his assignment of all his rights and privileges to the Cauca Company, and certainly it was not justified in presuming that the same was made without compensation. This item was within the submission, and I find nothing in the record of this case by which I can impeach the judgment of the commissioners.

The sum of $29,385.88, for traveling expenses; $29,200 on account of extra compensation; $16,605.10 for the expenses of the New York office; $5,122.48 for incidental expenses were also allowed, after a careful examination of the books of the Company, of the reports of the experts, of the evidence in general, and the arguments of counsel. The plaintiff furnishes the court with no evidence of fraud or corruption, nor of gross mistake, but virtually rests its contention *quoad* these matters on the insistence that they are not within the submission. As I have already in sub-
(1746) stance stated, I am of the opinion that this claim of complainant is without merit, and I find no evidence in this case that justifies me in declaring void the finding relating to said items.

Included in the award were the following sums, viz: $13,643.33, interest on the sum allowed as the cost of the Concession; $48,688.18, interest to January 26, 1897, on the stipulated cost of physical construction, and $32,333.40 as interest on the actual amount paid in by the bondholders.

There was no direct authority given in the submission for the allowance of interest, nor can I find that it is to be inferred from the facts and circumstances attending the negotiations, on which I have already fully commented. In fact, I infer to the contrary, for it appears that the Company was in the actual possession of the railway and the property connected therewith, enjoying such revenues as it

yielded, and at the same time receiving from the complainant an allowance in the nature of subsidy. I do not find that it was the intention of the parties to the submission that the Cauca Company should be allowed both the use of the property and interest on the fund used in constructing it. The indemnity was to be a sum which should be the equivalent of what the Company should prove it had expended in connection with the works constructed by it. I have found that this was not intended to limit the award to the actual expenditures for physical construction, but that it also included such incidental expenses as were necessary for the preparation and carrying on of the actual work in the field. But I am unable to concur in the conclusion that the submission justifies an allowance of interest on any of the expenditures, and therefore I hold that so far as such allowances are concerned the award is not binding. The items mentioned in the finding make in the aggregate the sum of $652,048.93, which is subject to a credit of $200,000, theretofore paid by the Republic of Colombia to the Cauca Company, leaving the sum of $452,048.93 the amount of the (1747) actual award as returned by the Commission. From this sum of $452,048.93 there must be deducted the items allowed by the Commissioners under a mistaken conception of the scope of the submission, as follows: $13,643.33, as interest on the cost of the concession to the Cauca Company; $48,668.18, as interest on the cost of the physical construction of the railroad; and $32,333.40, as interest on the actual amount paid in by the bondholders, making together the sum of $94,644.91, and leaving as the actual and valid amount of the award $357,404.02 in the gold coin of the United States of America which the Republic of Colombia is to pay to the Cauca Company.

An award is not always invalid because in some respects it exceeds the submission, for if the part which is in excess can be clearly separated from the remainder which is within the submission, the latter should stand. In this case the record of the proceedings of the convention, which is evidence before the court for all proper purposes, a duly certified copy of the same having been made part of the complainant's bill, plainly sets forth each particular item of the ward as returned by the Commissioners, and therefore there is not the least difficulty in pointing out the matters not within the submission, all of which can be easily separated from the general finding.

In addition to the above award, the Commissioners also directed that the Republic of Colombia should pay to Marcus Stine, the attorney representing the Cauca Company, the sum of ten thousand dollars, a special allowance,

as part of the costs incident to the Commission. This was not a proper allowance as costs, and it should not have been included in the finding made by the Commissioners, and consequently will be disregarded.

I do not deem it essential to discuss the questions raised as to the relations existing between the Cauca Company and the Colombian Construction and Improvement Company, further than to say that it is plainly shown that (1748) they were such as usually exist between railroads and their construction companies, and also that the conclusion is inevitable from the proceedings before the Commissioners that the complainant was fully advised of such relations before the convention was signed, and evidently intended that all legitimate expenditures of the said Improvement Company should be considered by the Commission in ascertaining the indemnity it was to find for the Cauca Company.

The court in reviewing the conduct and the award of the Commissioners must consider all the evidence laid before them by the parties to the convention, and it will regard as accurate the transcript of such proceedings, found in complainant's bill, and admitted by the defendants to be correct.

Other matters raised by the pleadings and discussed by counsel are not deemed material, at least, at this time, and will not now be considered.

I will pass a decree drawn in accordance with the views herein expressed.

(Signed.) NATHAN GOFF,
United States Circuit Judge, Fourth Circuit.

(1749) January 9th, 1901.

STIPULATION OF COUNSEL AS TO RECORD.

Filed 18 day of March, 1901.

L. B. Dellicker, Clerk C. C. U. S. D. W. Va.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA. AT CLARKSBURG.

The Republiic of Colombia, *vs.* The Cauca Company and The Colombian Construction and Improvement Company, and The Cauca Company and The Colombian Construction and Improvement Company, *vs.* The Republic of Colombia.	In Equity.

It is hereby stipulated and agreed by and between the parties, through their respective counsel, that in making up the transcript of record on appeal of the Republic of Colombia to the Circuit Court of Appeals for the Fourth Circuit, there shall be omitted therefrom the Spanish text of all the exhibits proved and offered in evidence in this cause and returned with the depositions taken in Boston before Albert Poor, Notary Public, and in New York before Edward C. Manners, Notary Public, and filed in this cause, and only the English translations thereof need be put into said transcript of record.

(Signed.) CARLISLE & JOHNSON,
Counsel for the Republic of Colombia.

COWEN, CROSS & BOND,
Counsel for the Cauca Company and
The Colombian Construstion and
Improvement Company.

DECREE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1750) DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

The Republic of Colombia, Complainant, *vs.* The Cauca Company and The Colombian Construction and Improvement Company, Defendants, and The Cauca Company and the Colombian Construction and Improvement Company, Complainants in Cross-bill, *vs.* The Republic of Colombia, Defendant to Cross-bill.	In Equity.

This cause came on to be heard at the October term, A. D. 1900, upon the pleadings and proofs, and was argued by counsel; and thereupon, upon consideration thereof, it is, this 11th day of March, A. D. 1901, ordered, adjudged and decreed as follows, to wit:

First. That the award made and executed October 22, 1897, by Lewis M. Haupt, chairman, and Christian F. Schramme, Commissioners constituting a majority of the Commission appointed under the Convention of January 4, 1897, between the Republic of Colombia and the defendant, the Cauca Company, for the sum of $652,048.93, less the sum of $200,000, theretofore paid by the complainant, leaving the amount of said award $452,048.94, payable in the City of New York, in gold coin of the United States of America, on January 26th, 1898, be and the same is hereby
(1751) approved, ratified and confirmed as and for a valid and binding award for and up to the sum of three hundred and fifty-seven thousand, four hundred and fifty-four dollars and two cents ($357,404.02), in gold coin of the United States of America, to be paid by the Republic of Colombia to the Cauca Company, in the City of New York, on the 26th day of January, A. D. 1898, with interest thereon from said date, and that as to any amount in excess of the sum above mentioned and payable as aforesaid, the following separate items of said original award, namely: $13,643.33, interest on the cost of the concession to the Cauca Company; $48,668.18, interest on the cost of the physical construction of the railroad; $32,333.40, interest on the actual amount paid in by the bondholders, making a total of $94,644.91, be, and the same is, hereby disallowed, and the temporary injunction heretofore granted is as to said

items of excess, aggregating $94,644.91, hereby made perpetual; and that the special allowance of $10,000 to Marcus Stine, Esq., counsel for the Cauca Company before said Commission, as part of the costs incident to said commission, be, and is, hereby also disallowed, and the temporary injunction heretofore granted be, and is, hereby made perpetual as to such special allowance.

Second. That the complainant and the defendants each pay their own costs, without allawance of costs in favor of either as against the other.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge.

March 11, 1901.
Ent. C. O. B., fo. 370.

PRAYER OF APPEAL.

(1752) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH CIRCUIT DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

The Republic of Colombia, Complainant by Original Bill,	
vs.	
The Cauca Company and The Colombian Construction and Improvement Company, Defendants.	In Equity.
and	
The Cauca Company and The Colombian Construction and Improvement Company, Complainants by Cross-Bill,	
vs.	
The Republic of Colombia, Defendant.	

Comes now the Republic of Colombia, complainant in the original bill and defendant in the cross-bill, in the above entitled cause, by Calderon Carlisle and William G. Johnson, its solicitors, and prays the court to allow to the said The Republic of Colombia an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, from all of the final decree herein passed on the eleventh day of March, A. D. 1901, except so much of said decree as disallows the sum of ninety-four thousand, six hundred and forty-four dollars and ninety-one cents ($94,644.91), part of the award herein, and as to said sum makes the temporary injunction heretofore granted perpetual; and except also so much of said decree as disallows the additional sum of ten

thousand dollars ($10,000), special allowance, to Marcus Stine, counsel for the Cauca Company before the Commission, and as to said sum of ten thousand dollars ($10,000) (1753) makes the temporary injunction heretofore granted perpetual.

And the said The Republic of Colombia files with this its petition for allowance of appeal its Assignment of Errors according to the requirements of the rules of court in such case made and provided, and prays the court to allow its said appeal and herewith tenders to the court its bond for costs on said appeal and prays the court to approve the same and to sign a citation to the said The Cauca Company and the said Colombian Construction and Improvement Company to be and appear at said United States Circuit Court of Appeals for the Fourth Circuit at the time and in manner and form as required by law.

And the said petitioner The Republic of Colombia, will ever pray &c.

(Signed.) THE REPUBLIC OF COLOMBIA,
By CALDERSON CARLISE &
W. G. JOHNSON, Solicitors.

Filed 18 day of March, 1901.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

ASSIGNMENT OF ERRORS.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(1754) DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

The Republic of Colombia, Complainant by Original Bill, *vs.* The Cauca Company and The Colombian Construction and Improvement Company, Defendants, and The Cauca Company and The Colombian Construction and Improvement Company, Complainants by Cross-Bill, *vs.* The Republic of Colombia, Defendant.	In Equity.

The Republic of Colombia, appellant from the decree entered herein on the eleventh day of March, A. D. 1901, assigns as error by the court the following:

1. The court erred in its construction of the true intent

and meaning of the agreement for submission to arbitration dated January 4th, 1897, in the proceedings mentioned.

2. The court erred in holding that the agreement of January 4, 1897, was ambiguous in its language, or contained any technical terms to be explained by the testimony of experts.

3. The court erred in considering the conflicting statements before the Commission, not offered in evidence in this case, by persons not called as witnesses in this cause (1755) to the exclusion of the admittedly correct translation of the agreement of January 4th, 1897, properly proved and uncontradicted by the evidence in this cause.

4. The court erred in not holding that the true intent and meaning of the agreement of January 4th, 1897, required the arbitrators to confine their award to the sum which the Cauca Company proved it had expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., imported for use on said railway.

5. The court erred in holding that the sum of one hundred and eight thousand, one hundred and eighty-one dollars and forty-two cents ($108,181.42) part of said award, being for salaries alleged to be due to officers of the defendant corporation, The Colombian Construction and Improvement Company, by the said The Colombian Construction and Improvement Company, was within the terms of the agreement of submission of January 4, 1897, and properly allowable by the arbitrators as a sum to be paid by the complainant, The Republic of Colombia, to the Cauca Company.

6. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000) part of said award, being a sum alleged to be due to James L. Cherry by The Colombian Construction and Improvement Company in consideration of the assignment to it of an alleged contract between said Cherry and the Cauca Company, and in consideration of the return by said Cherry to said The Colombian Construction and Improvement Company of the sum of eight hundred thousand dollars ($800,000.) of full paid stack of said The Colombian Construction and Improvement Company, was within the terms of the agreement of submission to arbitration of January 4th, 1897, and properly allowed by the arbitrators as a sum to be paid by the complainant The Republic of Colombia to the Cauca Company.

(1756) 7. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000), part of the said award, being a sum stipulated to be paid by The Colombian Construction and Improvement Company to James L. Cherry by the certain contract between said The Colombian Construction and Improvement Company and said James L. Cherry, set forth in Exhibit No. 8 to the Original Bill, was within the terms of the submission to arbitrators of January 4th, 1897, and was properly allowed by them as a sum to be paid by the Republic of Colombia to the Cauca Company.

8. The court erred in holding that the sum of twenty-nine thousand, three hundred and eighty-six dollars and thirty cents ($29,386.30), part of said award, being a sum alleged to be the travelling expenses due from The Colombian Construction and Improvement Company to Cherry and Schramme as officers of The Colombian Construction and Improvement Company, was within the terms of the submission to arbitrators of January 4th, 1897, and was properly allowed by them as a sum to be paid by The Republic of Colombia to the Cauca Company.

9. The court erred in holding that the sum of twenty-nine thousand, two hundred dollars ($29,200), part of said award, being part of a sum of fifty thousand dollars ($50,000), which it is alleged was, by a resolution of the Board of Directors of The Colombian Construction and Improvement Compaay passed on the 15th of February, 1897, agreed to be paid to said Cherry and Schramme by said The Colombian Construction and Improvement Company for services of said Cherry and Schramme in securing the agreement of arbitration of January 4th, 1897, was within the terms of the submission to arbitration of January 4th, 1897, and was propesly allowed as a sum to be paid by The Republic of Colombia to the Cauca Company.

10. The court erred in holding that the sum of sixteen (1757) thousand, six hundred and five dollars and ten cents ($16,505.10), part of said award, being the sum alleged to be the sum of the office expenses of The Colombian Construction and Improvement Company, was within the terms of the submission to arbitration of January 4th, 1897, and was properly allowed as a sum to be paid by The Republic of Colombia to the Cauca Company.

11. The court erred in holding that the sum of five thousand, one hundred and twenty-two dollars and forty-eight cents ($5,122.48), part of said award, being a sum alleged to be for sundries expended by The Colombian

Construction and Improvement Company, was within the terms of the agreement of January 4th, 1897, and was properly allowed as a sum to be paid by The Republic of Colombia to the Cauca Company.

12. The court erred in holding that any expenditures by or obligations of The Colombian Construction and Improvement Company were within the terms of the agreement of Janauary 4th, 1897, and in holding that the arbitrators had power and jurisdiction to allow any such as proper sums to be paid by The Republic of Colombia to the Cauca Company.

13. The court erred in holding that any of the sum of three hundred and fifty-seven thousand, four hundred and four dollars and two cents ($357,404.02), part of the said award, except the sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents ($33,909.14) fixed by stipulation of the parties before the arbitrators, was within the terms of the submission to arbitration of January 4th, 1897, and was properly allowed by said arbitrators as a sum to be paid by the Republic of Colombia to the Cauca Company.

14. The court erred in holding that the said award was valid and binding up to the sum of three hundred and fifty-seven thousand, four hundred and four dollars and two cents ($357,404.02).

(1758) 15. The court erred in holding that the resignation of Manuel H. Pena as a member of the Commission, and his ceasing to act as a member of the Commission, did not require the appointment of a new arbitrator under Article VI. of the agreement of January 4th, 1897, before any valid award could be rendered under the said agreement.

16. The court erred in holding that Pena was still a member of the Commission when the award was made.

17. The court erred in not holding the said award to be invalid because of the misconduct of Haupt and Schramme, as arbitrators, in the course of said arbitration and in the making of said award.

18. The court erred in holding that the award in these proceedings mentioned had any validity.

18. The court erred in not decreeing the said award in these proceedings mentioned to be null and void and in not decreeing the same to be delivered up to be cancelled.

29. The court erred in not making the preliminary injunction as to said entire award perpetual.

21. The erred in treating and considering any of the matters and things contained in the minutes of the arbitrators, being Exhibits Nos. 19, 20 and 21 with the original bill, as evidence in this cause for any other purpose than as showing what took place before said arbitrators.

22. The court erred in treating and considering as evidence upon the issue in this cause statements before the arbirrators not offered in evidence in this cause and made by persons not produced as witnesses in this cause.

23. The court erred in treating and considering as evi-
(1759) dence upon the issues in this cause statements before the arbitrators not offered in evidence in this cause and made by persons not produced as witnesses in this cause, and which statements had been rejected as evidence before the arbitrators by the said arbitrators themselves.

24. The court erred in decreeing interest to be due upon any part of the said award.

25. The court erred in holding that The Republic of Columbia was liable to the Cauca Company for any sum in excess of of the sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents ($33,909.14) which The Republic of Colombia tendered itself ready to pay to the Cauca Company in the original bill herein.

26. The court erred in not awarding costs to the complainant.

And The Republic of Colombia prays the United States Circuit Court of Appeals for the Fourth Circuit to reverse the final decree rendered in this cause on the eleventh day of March, A. D., 1901.

(Signed) CALDERON CARLISLE &
W. G. JOHNSON,
Solicitors for
THE REPUBLIC OF COLUMBIA.

Filed 18th day of March, 1901.

L. B. DELLICKER,
C. C. U. S. D. W. Va.

BOND.

(1760) Know all men by these presents: That we, The Republic of Colombia and The American Bonding and Trust Company of Baltimore city, are held and firmly bound unto the Cauca Company and The Colombian Construction and Improvement Company, in the full and just sum of five hundred dollars, to be paid to the said Cauca Company and The Colombian Construction and Improvement Company, their successors or assigns, to which payment, well and truly to be made, we bind ourselves and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of March in the year of our Lord one thousand nine hundred and one.

Whereas lately at the October Term, 1900, of the Circuit Court of the United States for the District of West Virginia, in a suit depending in said court between The Republic of Colombia, Complainant, and the Cauca Company and The Colombian Construction and Improvement Company, Defendants, a decree was rendered against the said The Republic of Colombia, and the said The Republic of Colombia has obtained the allowance of an appeal by the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Cauca Company and The Colombian Construction and Improvement Company, citing and admonishing the said Cauca Company and the said The Colombian Construction and Improvement Company, to be and appear in the United States Circuit Court of Appeals for the Fourth Circuit, at the city of Richmond, Virginia, thirty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said The Republic of Colombia, shall prosecute said appeal to effect and answer all costs if the said, The Republic of Colombia, shall fail to make good its plea, then (1761) the above obligation to be void; else to remain in full force and virtue.

THE REPUBLIC OF COLOMBIA,

By her Envoy Extraordinary and Minister Plenipotentiary, CARLOS MARTINEZ SILVA.

(Signed) THE AMERICAN BONDING AND TRUST COMPANY,
Of Baltimore city.

By W. H. LEWIS, Vice-President.

Attest: HENRY F. SMITH,
Assistant Secretary.

Sealed and delivered in the presence of——

(Signed) CALDERON CARLISLE,
OSCAR LUCKETT.

Approved:

(Signed) NATHAN GOFF,
U. S. Circuit Judge. [Seal.]
March 18, 1901.

ORDER ALLOWING APPEAL.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(1762) DISTRICT OF WEST VIRGINIA, AT
CLARKSBURG.

The Republic of Columbia, Complainant by Original Bill, *vs.* The Cauca Company and the Colombian Construction and Improvement Company, Defendants, and The Cauca Company and the Colombian Construction and Improvement Company, Complainants in Cross Bill, *vs.* The Republic of Colombia, Defendant.	In Equity.

The Republic of Colombia having prayed an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, from the final decree passed herein on the eleventh day of March, A. D. 1901, and filed with its petition for allowance of said appeal an assignment of errors, as required by the rules of said court, it is by the court, this 18th day of March, A. D. 1901, ordered that the said appeal be and the same hereby is allowed.

(Signed.) NATHAN GOFF,
U. S. Circuit Judge.

Ent. C. O. B., fo. 372.

CITATION.

(1763) UNITED STATES OF AMERICA, } *ss:*

The President of the United States to The Cauca Company and The Colombian Construction and Improvement Company—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the first Tuesday in May, 1901, pursuant to an appeal from the Circuit Court of the United States for the District of West Virginia, wherein the Republic of Colombia was plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Fourth Judicial Circuit, this 18th day of March, in the year of our Lord, one thousand, nine hundred and one.

NATHAN GOFF,
U. S. Circuit Judge.

(1764) Service of the within citation for the Cauca Company and the Colombian Construction and Improvement Company acknowledged, this 19th day of March, A. D. 1901.

COWEN, CROSS & BOND,
Solicitors for Appellees.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF WEST VIRGINIA, } *ss:*

I, L. B. Dellicker, Clerk of the Circuit Court of the United States for the District of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings in the equity cause of the Republic of Colombia *vs.* The Cauca Co. and The Colombian Construction and Improvement Co. and The Cauca Co. and The Colombian Construction and Improvement Co., Cross Bill *vs.* The Republic of Colombia, and now of record and on file in my office.

Seal of the Court.

In testimony whereof I hereto set my hand and the seal of said court at Clarksburg in said district this 22nd day of March, 1901, and in 125 year of the Independence of the United States of America.

L. B. DELLICKER,
Clerk U. S. C. C. D. W. Va.

(1765) On the same day, to wit, March 26, 1901, the appearance of Calderon Carlisle and William G. Johnson is entered for the appellant.

On another day, to wit, April 3, 1901, the appearance of Cowen, Cross & Bond, Hugh L. Bond, John W. Beaumont and Edward H. Murphy is entered for the appellees.

STIPULATION OF COUNSEL TO PASS CASE.

Filed May 6, 1901.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

May Term, 1901.

The Republic of Colombia, Appellant,
vs.
The Cauca Company and The Colombian Construction and Improvement Company, Appellees. } No. 407.

STIPULATION OF COUNSEL.

It is hereby stipulated and agreed, by and between Counsel for the Appellants and the Appellees, that this cause may be passed by the Court until after the action by the Supreme Court of the United States upon the Petition for Certiorari submitted to that Court on the 29th day of April, 1901.

And it is further stipulated and agreed, by and between said Counsel, that if the Supreme Court of the United States shall deny the writ of Certiorari, then this cause shall be continued until the next term of this court.

CARLISLE & JOHNSON,
Counsel for Appellants.

COWEN, CROSS & BOND,
HUGH L. BOND, JR.,
Counsel for Appellees.

(1766) Another day to wit: May 17, 1901 (May Term 1901). Cause is continued.

JOINT APPLICATION OF COUNSEL.

Filed Oct. 17, 1901.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Fourth Circuit.

November Term, 1901.

The Republic of Colombia
vs.
The Cauca Company, et al. } No. 407.

And

The Cauca Company
vs.
The Republic of Colombia. } No. 423.

Come now the parties in the above causes by their respective counsel and show to the court as follows:

1. That the said causes are cross-appeals and should properly be heard together.

2. That the cause is one of great importance and involves over four hundred thousand dollars.

3. That the record embraces over thirteen hundred pages and that in the opinion of counsel the case cannot be adequately presented to the court in the limit of four hours, but that at least eight hours will be necessary properly to present the contentions of the parties and to render such aid to the court as is the purposel of an oral argument.

4. That in the opinion of counsel the importance of the case is such that it shoud be heard by a full bench of three Justices.

5. That counsel for all parties desire to present the case at (1767) this term of the court if reasonable time for its presentation can be had and the convenience of the court will permit.

Counsel for all the parties therefore respectfully ask the court:

1. To hear the said two appeals together as one case and to enlarge the time for oral argument from two hours on a side to four hours on a side or eight hours for the entire argument on both appeals.

2. That the court will set the case for argument for two consecutive days certain in this, November term, before a full

bench of three justices at such time as may suit the convenience of the court, beginning not earlier than Monday, November 18th, 1901.

W. G. JOHNSON,
Counsel for the Republic of Colombia.

COWEN, CROSS & BOND,
Counsel for The Cauca Company and
The Colombian Construction and
Improvement Company.

At the November Term, 1901, of the said Circuit Court of Appeals, to wit: November 25, 1901, the said cause came on to be heard upon the transcript of the record, and was argued by counsel, and was submitted.

At the February Term of the said Circuit Court of Appeals, to wit: February 4, 1902, the court here announced and filed its per curiam opinion, which is as follows, to wit:

OPINION.

Filed February 4, 1902.

(1768) UNITED STATES CIRCUIT COURT OF APPEALS,

Fourth Circuit.

No. 407.

The Republic of Colombia, Apppellant, *versus* The Cauca Company and The Colombian Construction and Improvement Company, Appellee. No. 423. The Cauca Company, Appellant, *versus* The Republic of Colombia, Appellee.	Cross Appeals from the Circuit Court of the United States for the District of West Virginia, at Clarksburg.

[Argued Nov. 25, 1901. Decided Feb. 4, 1902.]

Before SIMONTON, Circuit Judge, and JACKSON and PURNELL, District Judges.

WILLIAM G. JOHNSON for the Republic of Colombia, and HUGH L. BOND, JR., and JOHN W. BEAUMONT (COWEN, CROSS & BOND and EDWARD H. MURPHY on briefs) for The Cauca Company et al.

Per Curiam:

We have carefully considered the opinion of the Circuit

Court, the subject matter of appeal in these two cases. We can add nothing to the clear statement of the facts of the case made by the learned judge who delivered the opinion of the court (106 Fed. Rep., 337), and we can add nothing to the reasons which led him to his conclusion; in which conclusion we entirely concur.

The decree of the Circuit Court is *Affirmed.*

(1769) Afterwards, at the same term, to-wit: on February 8, 1902, the Court here made and entered the following decree, to-wit:

DECREE.

Filed Feb. 8, 1902.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOURTH CIRCUIT.

No. 407.

The Republic of Colombia, Appellant,
vs.
The Cauca Company and Colombian Construction and Improvement Company, Appellees.

Appeal from the Circuit Court of the United States for the District of West Virginia.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of West Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby, affirmed, with costs.

Feb. 8, 1902. CHARLES H. SIMONTON,
Circuit Judge.

Afterwards, at the same term, to-wit: February 10, 1902, the said Appellant by its solicitor filed its petition for an appeal to the Supreme Court of the United States, together with an assignment of errors, which are as follows, to-wit:

(1770) **PRAYER OF APPEAL TO THE SUPREME COURT.**

Filed February 10, 1902.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

The Republic of Colombia, Complainant by Original Bill,
vs.
The Cauca Company and The Colombian Construction and Improvement Company, Defendants,
and
The Cauca Company and The Colombian Construction and Improvement Company, Complainants by Cross-bill,
vs.
The Republic of Colombia, Defendant.

No. 407.

Comes now the Republic of Colombia, complainant in the original bill and defendant in the cross-bill, in the above entitled cause, by William G. Johnson, its solicitor, and prays the court to allow to the said The Republic of Colombia an appeal to the Supreme Court of the United States from the final decree passed herein on the eighth day of February, A. D. 1902, except so much of said decree as affirms that part of the decree of the court below disallowing the sum of ninety-four thousand six hundred and forty-four dollars and ninety-one cents ($94,644.91) part of the award herein, and disallowing the additional sum of ten thousand dollars ($10,000) special allowance to Marcus Stine, counsel for the Cauca Company before the Commission and as to said sums granting a perpetual injunction.

And the said The Republic of Colombia files with this its petition for allowance of appeal its Assignment of Errors according to the requirements of the rules of court in such case made and provided, and prays the court to allow its
(1771) said appeal.

And the said petitioner The Republic of Colombia will ever pray, &c.

THE REPUBLIC OF COLOMBIA,
By WM. G. JOHNSON,
Its Solicitor.

(1772)

ASSIGNMENT OF ERRORS.

Filed Feb. 10, 1902.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

February Term, 1902.

The Republic of Colombia, Complainant by Original Bill,
vs.
The Cauca Company and The Colombian Construction and Improvement Company, Defendants,
and
The Cauca Company and The Colombian Construction and Improvement Company, Complainants by Cross-bill,
vs.
The Republic of Colombia, Defendant.

No. 407.

The Republic of Colombia, appellant from the decree entered herein on the eighth day of February, A. D. 1902, assigns as error by the court the following:

1. The court erred in its construction of the true intent and meaning of the agreement for submission to arbitration dated January 4th, 1897, in the proceedings mentioned.

2. The court erred in holding that the agreement of January 4, 1897, was ambiguous in its language, or contained any technical terms to be explained by the testimony of experts.

3. The court erred in considering the conflicting statements before the Commission, not offered in evidence in this case, by persons not called as witnesses in this cause to the exclusion of the admittedly correct translation of the agreement of January 4, 1897, properly proved and uncontradicted by the evidence in this cause.

4. The court erred in not holding that the true intent and meaning of the agreement of January 4, 1897, required the arbitrators to confine their award to the sum which the Cauca Company proved it had expended on the works executed by (1773) it in the construction of the said railway and for rolling stock, tools, etc., imported for use on said railway.

5. The court erred in holding that the sum of one hundred and eight thousand one hundred and eighty-one dollars and forty-two cents ($108,181.42) part of said award, being for salaries alleged to be due to officers of the defendant corporation, The Colombian Construction and Improvement Company, by the said The Colombian Construction and Improvement Company, was within the terms of the agreement

of submission of January 4, 1897, and properly allowable by the arbitrators as a sum to be paid by the complainant, The Republic of Colombia, to the Cauca Company.

6. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000) part of said award, being a sum alleged to be due to James L. Cherry by The Colombian Construction and Improvement Company in consideration of the assignment to it of an alleged contract between said Cherry and The Cauca Company, and in consideration of the return by said Cherry to said The Colombian Construction and Improvement Company of the sum of eight hundred thousand dollars ($800,000) of full paid stock of said The Colombian Construction and Improvement Company, was within the terms of the agreement of submission to arbitration of January 4, 1897, and properly allowed by the arbitrators as a sum to be paid by the complainant The Republic of Colombia to the Cauca Company.

7. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000), part of the said award being a sum stipulated to be paid by The Colombian Construction and Improvement Company to James L. Cherry by the certain contract between said The Colombian Construction and Improvement Company and said James L. Cherry, set forth in Exhibit No. 8 to the Original Bill, was within the terms of the submission to arbitrators of January 4, 1897, and was properly allowed by them as a sum to be paid (1774) by The Republic of Colombia to The Cauca Company.

8. The court erred in holding that the sum of twenty-nine thousand three hundred and eighty-six dollars and thirty cents ($29,386.30), part of said award, being a sum alleged to be the travelling expenses due from the Colombian Construction and Improvement Company to Cherry and Schramme as officers of The Colombian Construction and Improvement Company, was within the terms of the submission to arbitrators of January 4, 1897, and was properly allowed by them as a sum to be paid by the Republic of Colombia to the Cauca Company.

9. The court erred in holding that the sum of twenty-nine thousand two hundred dollars ($29,200), part of said award, being part of a sum of fifty thousand dollars ($50,000) which it is alleged was, by a resolution of the board of directors of The Colombian Construction and Improvement Company, passed on the 15th of February, 1897, agreed to be paid to said Cherry and Schramme by said The Colombian Construction and Improvement Company for services of said Cherry and Schramme in securing the agreement of arbitration of January 4, 1897, was within the terms of the submission to

arbitration of January 4, 1897, and was properly allowed as a sum to be paid by The Republic of Colombia to The Cauca Company.

10. The court erred in holding that the sum of sixteen thousand six hundred and five dollars and ten cents ($16,605.10), part of said award, being the sum alleged to be the sum of the office expenses of The Colombian Construction and Improvement Company was within the terms of the submission to arbitration of January 4, 1897, and was properly allowed as a sum to be paid by The Republic of Colombia to The Cauca Company.

11. The court erred in holding that the sum of five thousand one hundred and twenty-two dollars and forty-eight cents (1775) ($5,122.48), part of said award, being a sum alleged to be for sundries expended by The Colombian Construction and Improvement Company, was within the terms of the agreement of January 4, 1897, and was properly allowed as a sum to be paid by the Republic of Colombia to the Cauca Company.

12. The court erred in holding that any expenditures by or obligations of The Colombian Construction and Improvement Company were within the terms of the agreement of January 4, 1897, and in holding that the arbitrators had power and jurisdiction to allow any such as proper sums to be paid by The Republic of Colombia to the Cauca Company.

13. The court erred in holding that any of the sum of three hundred and fifty-seven thousand four hundred and four dollars and two cents ($357,404.02), part of the said award, except the sum of thirty-three thousand nine hundred and nine dollars and fourteen cents ($33,909.14) fixed by stipulation of the parties before the arbitrators, was within the terms of the submission to arbitration of January 4, 1897, and was properly allowed by said arbitrators as a sum to be paid by The Republic of Colombia to The Cauca Company.

14. The court erred in holding that the said award was valid and binding up to the sum of three hundred and fifty-seven thousand four hundred and four dollars and two cents ($357,404.02).

15. The court erred in holding that the resignation of Manuel H. Pena, as a member of the Commission, and his ceasing to act as a member of the Commission, did not require the appointment of a new arbitrator under Article VI of the agreement of January 4, 1897, before any valid award could be rendered under the said agreement.

16. The court erred in holding that Pena was still a member of the Commission when the award was made.

17. The court erred in not holding the said award to be

(1776) invalid because of the misconduct of Haupt and Schramme, as arbitrators, in the course of said arbitration and in the making of said award.

18. The court erred in holding that the award in these proceedings mentioned had any validity.

19. The court erred in not decreeing the said award in these proceedings mentioned to be null and void and in not decreeing the same to be delivered up to be cancelled.

20. The court erred in not making the preliminary injunction as to said entire award perpetual.

21. The court erred in treating and considering any of the matters and things contained in the minutes of the arbitrators, being Exhibits Nos. 19, 20 and 21 with the original bill, as evidence in this cause for any other purpose than as showing what took place before said arbitrators.

22. The court erred in treating and considering as evidence upon the issues in this cause statements before the arbitrators not offered in evidence in this cause and made by persons not produced as witnesses in this cause.

23. The court erred in treating and considering as evidence upon the issues in this cause statements of persons before the arbitrators not offered in evidence in this cause and made by persons not produced as witnesses in this cause and which statements had been rejected as evidence before the arbitrators by the said arbitrators themselves.

24. The court erred in decreeing interest to be due upon any part of the said award.

25. The court erred in holding that The Republic of Colombia was liable to The Cauca Company for any sum in excess of the sum of thirty-three thousand nine hundred and nine dollars and fourteen cents ($33,909.14) which The Republic of Colombia tendered itself ready to pay to The Cauca Company in the Original Bill herein.

26. The court erred in not awarding costs to the complainant.

27. The court erred in affirming the decree of the court (1777) below.

And The Republic of Colombia prays the Supreme Court of the United States to reverse the final decree rendered in this cause on the 8th day of February, 1902.

WM. G. JOHNSON,
Solicitor for the Republic of Colombia.

(1778) Thereupon, on the same day, to-wit: Feb. 10, 1902, the Court here made and entered the following order, to-wit.

ORDER GRANTING APPEAL.

Filed Feb. 10, 1902.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

The Republic of Colombia, Complainant by Original Bill,
vs.
The Cauca Company and The Colombian Construction and Improvement Company, Defendants,
and
The Cauca Company and The Colombian Construction and Improvement Company, Complainants in Cross-bill,
vs.
The Republic of Colombia, Defendant.

No. 407.

The Republic of Colombia having prayed an appeal to The Supreme Court of the United States from the final decree passed herein on the eighth day of February, A. D. 1902, and filed with its petition for allowance of said appeal an assignment of errors, as required by the rules of said court, it is by the court this tenth day of February, A. D. 1902, ordered that the said appeal be and the same hereby is allowed, and the bond for costs is hereby fixed at the sum of five hundred dollars.

CHARLES H. SIMONTON,
Circuit Judge.

(1779) **APPEAL BOND.**

Filed Feb. 11, 1902.

KNOW ALL MEN BY THESE PRESENTS: That we, the Republic of Colombia, and The American Bonding and Trust Company of Baltimore City, are held and firmly bound unto The Cauca Company and The Colombian Construction and Improvement Company, in the full and just sum of Five hundred dollars, to be paid to the said Cauca Company and The Colombian Construction and Improvement Company, their successors or assigns, to which payment, well and truly to be made, we bind ourselves, and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of February in the year of our Lord one thousand nine hundred and two.

Whereas, lately at the February Term 1902 of the United States Circuit Court of Appeals for the Fourth Circuit, in a suit depending in said court between The Republic of Colombia, Appellant, and The Cauca Company and the The Colombian Construction and Improvement Company, Appellees, a decree was rendered against the said The Republic of Colombia, and the said The Republic of Colombia has obtained the allowance of an appeal by the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Cauca Company and The Colombian Construction and Improvement Company, citing and admonishing the said Cauca Company and the said The Colombian Construction and Improvement Company to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, thirty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said The Republic of Colombia shall prosecute said appeal to effect and answer all costs if the said The Republic of Colombia shall fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

THE REPUBLIC OF COLOMBIA,
By her Envoy Extraordinary and Minister Plenipotentiary
CARLOS MARTINEZ SILVA. [SEAL.]

Seal of American Bonding and Trust Co. of Baltimore City.

THE AMERICAN BONDING AND TRUST COMPANY,
of Baltimore City,
JACKSON GUY, Vice Prest.
for State of Va.

Attest: SAML. THOMAS PULLIAM,
Asst. Secy for State of Va.

(1780) The foregoing bond is endorsed: "Appd. Charles H. Simonton, Circuit Judge. 11 Feb. 1902."

UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Cauca Company and The Colombian Construction and Improvement Company—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, D. C., on the 9th day of March, 1902, pursuant to an appeal from the United States Circuit Court of Appeals for the Fourth Circuit, wherein you are the Appellees, and the

Republic of Colombia is the Appellant, to show cause, if any there be, why a decree rendered against the said Appellant on the 8th day of February, 1902, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, Circuit Judge of the United States, this 11th day of February, in the year of our Lord one thousand nine hundred and two.

CHARLES H. SIMONTON,
U. S. Circuit Judge.

Service admitted this 15th day February, 1902.
COWEN, CROSS AND BOND,
Solicitors for Defendants.

(1781) And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Test: HENRY T. MELONEY,
Clerk.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA, *ss:*

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the aforegoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, on this 17th day of February A. D. 1902.

{Seal of the U. S. Circuit Court of Appeals, Fourth Circuit.}

HENRY T. MELONEY,
Clerk U. S. Circuit Court of
Appeals, Fourth Circuit.